ADDRESSES

Made at the

Fifth Annual Meeting

of

The Liability Insurance Association

on

State Insurance of Workmen's Compensation for Accidents

HOTEL ASTOR, NEW YORK CITY

October Nineteenth

Nineteen Eleven

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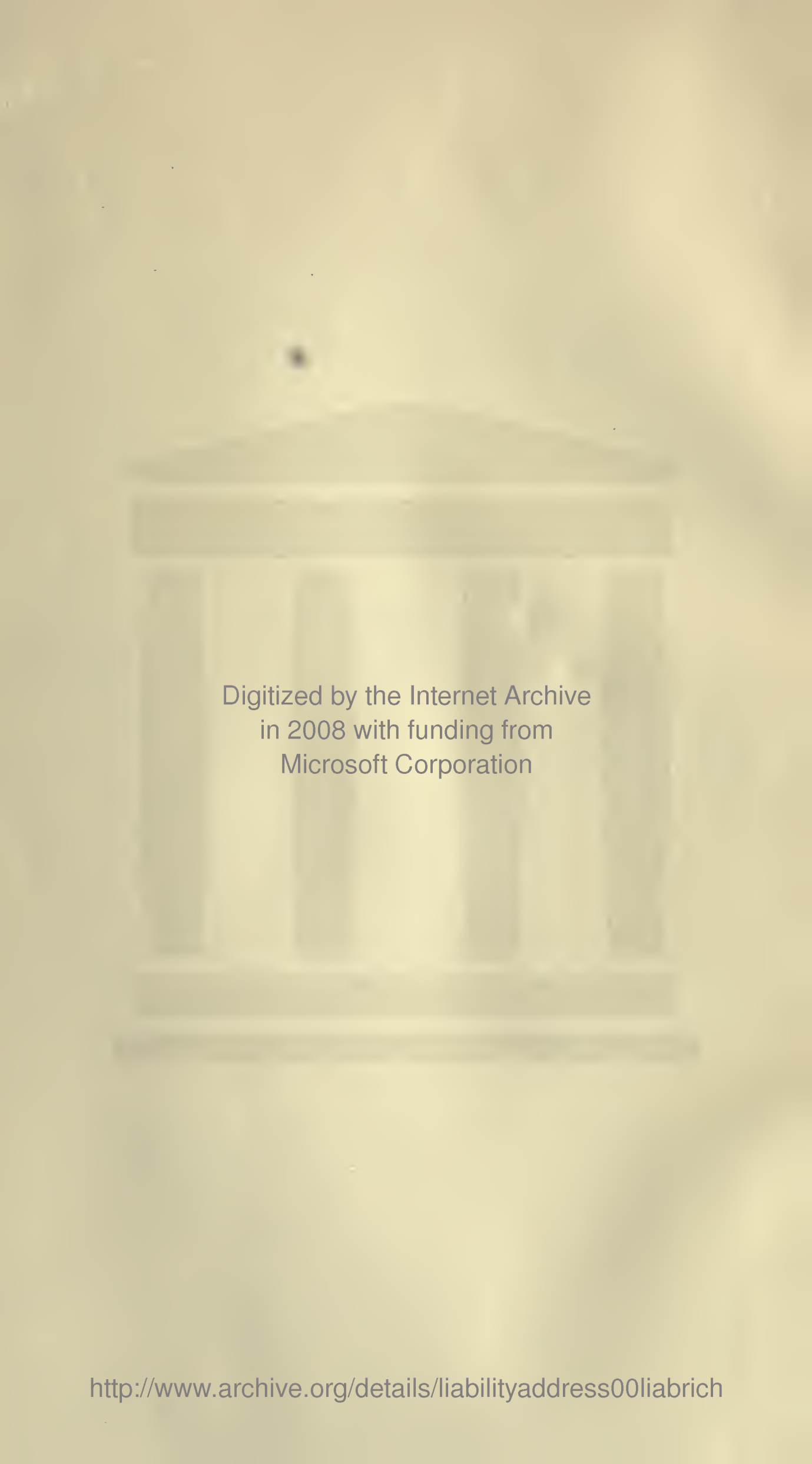

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INDEX

INVASION OF THE INSURANCE FIELD BY THE STATE

Address of Mr. P. Tecumseh Sherman

Former Commissioner of Labor, State of New York

Just now there is a considerable inclination in public opinion towards state insurance of compensation for industrial injuries, owing to dissatisfaction with the accident insurance companies on account of their high rates (actual or proposed) in the States which have recently enacted elective compensation laws. In public discussions of the workings of our old employers' liability laws it was common to hear all classes affected denounced as scoundrels and robbers,—the employers and judges by the employees, the workmen and juries by the employers, and the lawyers and insurance companies by everybody. Then along came the advocates of "compensation" and pointed out that the fault was not with people, but with the law. Now, under a hybrid mixture of the compensation and the tort liability, it is expected that everybody will be good and everything generally satisfactory—that the workmen and employers may select whichever of two or three liabilities they want, and that for a trifling amount, insurance companies will assume the employers' risks and pay the bills. But you "wicked" insurance people, without experience under this new combination of liabilities, insist upon charging a rate calculated to cover the risk—which rate is high beyond popular expectations. Perhaps later some limited form of insurance under these conditions can be worked out, for which a more acceptable rate can be made. But in the meantime your companies are in for a torrent of abuse. And what is the remedy now being proposed? To amend the legal liability so as to make it more insurable? No. To follow the Massachusetts example of building up an employers' mutual insurance organization so as to furnish reasonable rates if the companies' rates are unreasonable? Again, no. But it is proposed to resort blindly to State insurance. State insurance has the advantage that it can offer most acceptable rates of premiums,

for it need not make those rates high enough to pay for the risks—any deficiency caused by the rates being put below cost can be left for the taxpayers to settle later. And the "wasteful" expenses of private insurance can thereby be eliminated; for the expenses of investigating to fix rates can be avoided by simply guessing at them, and the expenses of investigating claims in order to determine their validity can be avoided by simply allowing them. Having thus naively side-stepped all the disturbing difficulties in the way of administering the law rightly and of making ends meet, the problem becomes supremely simple and State insurance the ideal solution. But, if the problem of insuring compensation for industrial accidents cheaply can be thus simply solved, why not have the State insure everything for everybody in the same way regardless of cost and at "acceptable" rates,—not only insure against industrial accidents but also against all accidents, sickness, death, old age, unemployment, insanity, fire, flood, etc.?

The answer to that question is, of course, obvious,—that State insurance does not really solve the problem, but evades it.

In what follows I will present to you what, in my opinion, are the principal objections to State insurance of compensation.

In Europe and the Colonies of Great Britain there are four principal forms of the law of compensation for work injuries.

(1) The *simple* form of employers' legal liability for compensation—the form of Great Britain and its Colonies.

(2) Compulsory *mutual* insurance of compensation—the German and Austrian form.

(3) Compulsory *State* insurance of compensation—the Norwegian form.

(4) Compulsory insurance of compensation in various *optional* ways—the form of Italy, Finland, The Netherlands, etc.

Even if we believe that the German system of compulsory mutual insurance is the best, yet we cannot adopt it, because it is fitted only to political, social and industrial conditions far different from ours. More particularly the trade associations, with powers of regulation, etc., over the establishments of their

members, are vital to the success of the German system. Without that feature the German system would result in the subsidization of careless employers at the expense of the careful —in short—in the promotion of accidents.

As between the Norwegian system of compulsory State insurance on the one hand, and the Italian, Finnish and Netherlands' system of compulsory insurance in elective ways on the other hand, the tendency of opinion just now seems to be in favor of the Norwegian method. For if the State goes into the insurance business at all, it is simpler and cheaper—indeed it is practically essential—for it to have a monopoly. Otherwise it will get the bad risks and the risks in those employments for which it may accidentally place its rates too low, and will then have to compete with private companies for the good business, and, of course, incur a higher average cost of administration. The reason why the State cannot successfully compete with private companies is not far to seek; it is because it cannot conduct business as efficiently as can private enterprise. Its errors in rates are constant and flagrant. Its cost of administration is in some cases very low; but that is effected largely by omitting the expensive procedure requisite for right conduct and efficiency, so that the real cost to employers and to the public may eventually be very high. The State insurance office may secure the entire field to itself by operating at a loss; but if, to avoid that, it jacks up rates arbitrarily, private companies will underbid for the really good risks, and leave the State to carry the bad. We seldom hear well-informed advocates of State insurance boast of its success in Italy, Belgium or the Netherlands. To thrive, State insurance must have a practical monopoly—there must be compulsory State insurance within the field in which it operates. Therefore, Norway is the only model to follow, if we elect State insurance.

The choice, therefore, narrows down until it lies between compulsory State insurance, as in Norway, and a simple compensation liability law, as in England.

There is one vital factor omitted in the calculations of the majority of the advocates of compulsory insurance. Their object is merely to distribute the wage losses from industrial

accidents. But that is not the sole object of a compensation law. Two of the principal objects of the compensation law are to do prompt average justice and to *prevent accidents.* These latter objects our advocates of State insurance generally ignore. It is the prevailing opinion of experts in industrial safety, that the imposition upon employers individually of the compensation liability for approximately all accidents occurring in their respective establishments, is the most efficient single means of effecting a reduction in industrial accidents, and, therefore, that if the employer be required by law to insure the payment of that liability, the cost of his insurance should be very closely in proportion to what would be his direct liability were it not for the insurance. But if insurance enables an employer to shift the excess of his liabilities (over the average) upon his competitors, the effect will be to encourage him to continue the use of dangerous processes and equipment, obsolete machinery and cheap and unskilled labor, to increase the intensity of his labor and to relax his care and efforts for safety. If, for example, A. is in competition with X., Y. and Z., and his buildings, ways, machinery, etc., by reason of particular defects, while otherwise entirely efficient, are comparatively dangerous, so as to cause twice as many accidents (in proportion to numbers employed) as the respective plants of X., Y. and Z., which are safer, but yet no more efficient, what material inducement is there for A. to spend large sums to re-equip his plant for the sole purpose of avoiding a financial liability which X., Y. and Z., all his competitors, must share equally with him anyhow? The illustration is crude, but the economic truth that it illustrates is the crucial factor to be dealt with in accident prevention. It is a thesis of the advocates of compulsory insurance: "That the cost of caring for injured workmen and their families should be paid in such a manner as to enter into the price of the products or the services and be paid ultimately by the consumer." But that thesis is indefinite, in that it does not specify into the price of what particular products that cost should enter. Referring to the previous illustration—if the cost of compensating for the accidents in the establishment of A. should be proportionately five times that cost in each of the

establishments of X., Y. and Z., respectively, should the consumers of the products of X., Y. and Z. pay part of that item in the cost of the products of A., and should the consumers of the products of A. get them at a price which does not include that full item in their cost, because a large proportion of it has been shifted over upon A.'s competitors? I think not; and therefore contend that the thesis in question should be amended to specify that the cost of caring for workmen injured in the production of a product should be added as an item in the price of *that* product, and should not be distributed among other like products or among consumers generally; otherwise we would be subsidizing uneconomic production. It is perhaps possible that the State may be able, by statutory regulations, to compel all employers in each industry to maintain something approaching a common level of safety, so that a "flat" rate for each industry would correctly distribute the compensation cost. But such a level of safety could only be low; for State regulations are inevitably either merely elementary or too general, inelastic and inexpert to effect the high level of safety that could be reached if safety were to be made an economic advantage to the individual employer. Accidents are not so much in proportion to violations of State regulations as they are in proportion to the risks inherent in the trade, to the care and conduct of the employer, to the character of his equivalent (including personnel) and to the intensity of his "drive." It is simply a fetich to believe that the State by formal regulations can control these latter factors of danger as well as the employer can or as he would if given a direct economic motive for so doing. And the idea that State officials, in fixing premium rates for State insurance, can gauge the differences between the levels of risk in different industries, so as correctly to distribute the accident cost between the different industries, has so far proved wholly illusory in practice. Equally illusory is the idea, embodied in the Washington law, that State officials can correctly differentiate as to exceptionally dangerous establishments in particular industries, for the purpose of imposing an exceptionally high premium rate upon such establishments,—for that supposes a common level of safety, with a few conspicuous exceptions, whereas in fact, the

different establishments in each industry are more apt to run the gamut of the scale of safety conditions, so that if the rate of insurance is varied for one it should, in fairness, be varied for many or for all. The German method of insurance in trade associations secures a proper distribution of accident cost as between the different trades; and, by confiding to each trade association powers of self-regulation, it so nearly succeeds in producing a common (and nevertheless a high) level of safety in all the establishments in each trade, that a flat rate of premiums for each trade approximately distributes the accident cost correctly among the individual employers, and thereby tends to reduce accidents. But the German method of insurance is not strictly State insurance. And the German regulations for safety are corporate self regulations and not *State* regulations. And no form of State insurance has ever yet been devised or suggested which fits this problem of promoting safety. The first objection to State insurance, therefore, is that it would result generally in an arbitrary flat rate in each trade, which, while it might distribute the cost of compensating for accidents, would not distribute it justly nor so as to offer any economic inducement to the individual employer to exert the utmost thought and care and to go to the extreme of his ability in expense in order to reduce the proportion of accidents in his own establishment. This objection to State insurance is illustrated by a comparison between the premium rates in England, under simple compensation, and the rates in Norway under State insurance. In England, the rate for each trade, being subject to competition, is elastic, and varies approximately in proportion to the estimated risk in each establishment. In Norway the rate for each industry is "flat"; and experience shows that in the past the rates for the respective industries have generally been either about double or about one-half the estimated cost of the compensation liability accrued; in other words, not only have the safer establishments paid part of the losses in the less safe establishments in the same trade, but many trades have paid part of the losses in other trades. Perhaps under the exceptional management of the Norwegian insurance office the rates will be gradually adjusted until in time they will become approximately fair as

between the different trades; but the vital objection will still remain that the careful employer will be made to pay the same rate as the careless employer—in short, that in regard to this whole subject employers will be reduced to the condition of mere wards of the State, so that each will have to take whatever rate the State may give him and will feel called upon to take only the precautions against accidents that the State may require. That is far from being the most effective way to prevent accidents. But it is a most effective first step on the way to complete State control and operation of industries.

We come now to the question of comparative cost. Under simple compensation, cost has only one aspect—namely, cost to the employer; although it is also material to study further how much of that cost may be economic waste in commissions and profits of the insurers;—for the simple compensation liability leads to voluntary insurance in private companies only comparatively less general than compulsory insurance. Under compulsory State insurance there are two aspects in which to study cost: *i. e.,* cost to employers and cost to the State. Care must therefore be exercised in comparing the premium rates under simple compensation and under State insurance, otherwise it will be a comparison between the whole cost and only a part of the cost—for one of the great dangers of State insurance is that in the long run the premium rates charged employers will be a mighty small part of the cost to the State.

There is only one working example of compulsory State insurance of compensation—the Norwegian system. (In Washington the insurance is not of "compensation.") Except as to justice and the prevention of accidents, which that system ignores—in other words, as a pure insurance proposition—the experience under the Norwegian system has so far been quite favorable, (*i. e.,* so far as known, for Norwegian experience is to a large degree hidden from us by difficulties of language). To what extent that favorable experience has been due to the extremely favorable conditions in Norway, is a question. The experiment has been on a small scale, for the population of Norway is only about 2,200,000, of whom only a relatively small proportion

are engaged in industries covered by insurance; the population is stable, which is an important factor in cheapness and correctness of administration, and the vital dangers of the scheme have not yet been fairly tested, because it has been only a few years in operation and so far has happened to be under the charge of an unusually competent insurance expert, and singularly free from politics. But even under such conditions, the insurance rates in Norway are not apparently any lower than the medium English rates. It may be that the maximum English rates really prevail, in which case insurance in Norway is substantially the cheaper for employers; but it must be borne in mind that Norwegian insurance covers only compensation for accidents, while the English rates cover also a liability for compensation for occupational diseases and an alternative liability for full damages in tort in certain exceptional cases. And against any advantage in the Norwegian rates must be offset the fact that those rates promptly resulted in a deficiency in the reserves to cover accrued liabilities. It is true that the deficiency was small —only about $100,000—but on the same scale in New York or Pennsylvania a similar error would have resulted in a deficiency of several million dollars—no mere trifle to be made up by the public. And this misadventure under the careful Norwegian management indicates a grave danger of State insurance—namely, a tendency to make a good showing for cheap management, leaving it to the taxpayers generally to make good the loss from any probable error. The Washington scheme is a novel experiment on a conservative scale and the law is excellently framed, but it is subject to about the same dangers as the Norwegian scheme. The Ohio scheme has no requirement for any form of reserves and it has the functions of assessing premium rates and of adjudicating claims confided without rule or limitation to the discretion of a political board of three members, subject to political influences in the direction of low rates and high awards. It, therefore, is subject to vastly greater danger of miscarriage than the Norwegian scheme. Experience and reason both excite the fear that

such schemes will result in deficiencies and occasionally in heavy deficiencies. And deficiencies would undoubtedly be most serious evils; for the effect of a deficiency is to transfer the burden of paying compensation from the employers responsible for the injuries, to persons not in any way responsible.

It is a strong argument in favor of State compulsory insurance that the expense of operation in Norway has been calculated to be only 11%, while the corresponding expense of the English companies, under a regime of private compensation, has been about 36% of premiums—in other words, what is generally regarded as an economic waste appears to be three times as great in England as in Norway. But the correctness of the 11% figures is open to serious doubt, and the force of this argument is further weakened by two considerations: (1) So far as expense of operation covers the cost of investigation, etc., requisite for the differentiation of rates in proportion to the actual risks in each trade and under different employers and in different establishments it is not waste, but is most desirable even at a high price. Consequently, so far as State insurance saves expense by ignoring that differentiation where it is material, State insurance is "cheap" only in a derogatory sense—*i. e.*, it is bad. (2) In Norway, under State insurance, all payments for compensation (except by several railroads, which are exempted from the law) are subject to this 11% waste. But in England a material proportion of establishments, which pay their compensation obligations regularly, do not insure or insure themselves, and thus escape this waste altogether. And not only that, but under the latitude which the compensation law of England most wisely allows and encourages, but which a compulsory State insurance law would tend to discourage, some large establishments have evolved insurance and compensation schemes of their own—with and without reinsurance—more beneficial to employees and more effective for the prevention of accidents than any general scheme prescribed by any law. That is the ideal for large establishments—

more desirable even than the German system at its possible best.

Now let us consider the specific dangers of State insurance. State insurance means that the State is to embark in business. The general object of business is to make a profit. But State insurance of compensation is not intended to make a profit. What, then, is its object? If there is general agreement upon its object or upon several consistent objects, and little danger of its being diverted to other purposes—all right. But if, on the other hand, the advocates of compulsory insurance have different and practically inconsistent objects, or if the scheme is subject to excessive danger of being diverted to other and less desirable purposes than those intended—all wrong. Now, as a matter of fact, the objects of compulsory insurance are not clearly defined nor agreed to and it is peculiarly liable to be diverted from its original purposes. The Washington law is designed to prevent destitution by insuring to the victims of industrial accidents, not "compensation" but merely a minimum means of existence not proportioned to wage loss. The purpose is commendable; but it is not the object of the advocates of compulsory insurance of "compensation." And as a substitute for the liability for damages in all cases it is most improbable that the pittances which the Washington law allows will long content the working people—in other words, that law is almost certainly doomed to prompt amendments, that will change its purpose. The object of the Norwegian law is to insure compensation of the employees injured in each trade covered, at the expense of the employers in that trade, to be assessed ratably according to pay rolls; while the object of the advocates of a simple compensation law with a legal obligation to insure added, is to secure compensation for industrial injuries at the expense of the particular employers responsible. Under the German system these two objects are to a degree harmonized by a peculiar practice which comes near to placing the risks in every establishment in the same trade on a par; but without that harmonizing factor these two objects are practically inconsistent.

The most generally avowed object of the American advocates of compulsory insurance is to "distribute" the shock of the cost to employers of compensating for industrial accidents. But distribute among whom? Among the public generally, among all taxpayers, among those in nowise responsible? That is certainly the object towards which their schemes are directed, whether or not that be their conscious purpose. But to so distribute the compensation cost would in effect subsidize unnecessary extra-hazardous processes, methods and practices. That object, therefore, deserves the most emphatic condemnation. It is in effect an entirely different proposition from the economic doctrine that the accident cost in production should be distributed among consumers by adding that item in the cost of a product to its price—for that does not mean that the compensation cost in one product should be distributed among other products, but that it should be added to the price of that particular product. Equally objectionable is the purpose of State insurance which many of the representatives of the working people have in view. They claim that industrial employees are as much the benefactors of the State as soldiers, and deserve to be pensioned by the State for injuries, like soldiers, regardless of expense and of the methods of meeting that expense. But soldiers serve the State, while private workmen serve their employers; and for the same reason that the State "compensates" the disabled soldier, the private employer—not the State nor the public—should compensate the disabled workman. State insurance, then, is not yet a formulated scheme with a definite object; but its advocates are divided into groups with diverse and inconsistent objects; and its social, industrial and economic effects will vary radically according to the objects towards which its methods, when formulated and defined, are directed. It may be used to throw a part of the accident cost of this generation over upon the succeeding generation, to subsidize the hazardous industries at the expense of the State or of the safer industries, to favor unionized trades at the expense of the non-unionized, or vice versa, etc., in short it is a screen behind which the

cost of compensating for injuries may be shifted in any way and in any proportion that the legislature or the board of officials to whom the legislature confides the administration may make up its mind to, from time to time. In Ohio, for example, no methods of insurance are prescribed by the law. The Board of Awards may tax the employers affected almost as it chooses, may maintain the fund about as it chooses, and may make awards against the fund almost to whom it chooses and upon such evidence as it chooses—without right of appeal in anyone except the claimant. The scheme, therefore, is unformulated, indefinite and easily divertible towards any object that the Board of Awards, in the use or misuse of its discretion, may decide. And right there arises the political danger. There will be no direct private interest to keep individual claims within proper bounds, but there will be thousands of claimants exerting strong political pressure upon the board to allow exaggerated or illegal claims. Will the board stand firm, scrutinize all claims critically and incur the heavy expense requisite to investigate them properly? And will it court unpopularity with employers by imposing insurance rates high enough to establish a safe reserve to meet the yearly accumulations of continuing pensions? Is it not more probable that it will commit the common error of omitting needful investigations in order to show a low rate of expense, allow exaggerated and doubtful claims in order to please the working people and fix low rates in order to please the employers? And if that probability occur, the scheme will become a social evil of the worst kind.

The problems involved in the adjudication or allowance of claims for compensation are serious enough to deserve separate consideration. Claims for compensation *must not* be indiscriminately allowed; for the tendency to malinger and the opportunities for fraudulent impositions in claims for dependency under a compensation law are so great as to imperil the success of the whole scheme, unless effectively checked. The German practice of shifting the burden of compensation for the first 13 weeks of disability onto the sickness insurance fund (to which the working

people contribute) tends to check malingering, and the German employers' association, which, in first instance, pass upon all claims, are diligent to prevent impositions; nevertheless fraudulent impositions have been so great under the German scheme, as, in the opinion of many close observers, to condemn the whole scheme. And in every other compensation insurance country of which I have any information on this point—unfortunately I have none as to Norway—the complaints about malingering and impositions are yet more insistent. And the difficulties of avoiding these abuses would be far greater here than in Europe. For in the northern countries of continental Europe all points of information about a workman requisite to avoid impositions in the application of the compensation law in case of an injury to him are generally of record and easily accessible—his age, the fact of his marriage, the names and ages of his wife, children, parents, etc., are all facts easily ascertainable and proved. In America on the other hand, with our lack of vital statistics and unstable and immigrant working population, such necessary facts are infinitely more difficult and expensive to ascertain and often impossible to prove. The opportunities for fraudulent claims for dependency, etc., are, consequently, far greater here than in Europe. And in order to prevent malingering and exaggerations of disability upon a wholesale scale it will be essential to provide adequate and efficient machinery for a careful and critical investigation of all claims for disability. On the continent of Europe the machinery for that purpose existed ready made, at the time of the adoption of the insurance laws, in the local police and health officers, who, in highly centralized systems of government, are so closely correlated with central administration that they can be used most efficiently by the State insurance office for its purposes. But in America there is no such machinery. Are we then going ahead blindly with a scheme that foreign experience indicates is peculiarly apt to create a class of parasites upon employers' or State liability and a regime of fraud and imposture? This question does not apply to simple compensation, for there the employer is directly

liable, and being "Johnny on the spot" will, with the means provided by the compensation law, protect himself against fraud and imposture; and, if he insures, his insurers will to some degree command his services, and besides, being in business for profit, will have an economic interest to go to the expense—miscalled economic waste—necessary to guard against imposition. But where, under State compulsory insurance, the State assumes the liability, the employer is out of it and the whole task of investigating claims will fall upon the State. In New York, for example, there would pour into the State insurance office about 2000 notices of accidents a month. How would the State deal with them? It should in each case ascertain whether the injury was one entitling the injured person to compensation, *i. e.*—whether it arose out of and in the course of the employment, and not from an excepted cause, etc. It should then ascertain the earnings of the injured workman, the nature of his injury and the degree and duration of his disablement—or, in case of fatal injury, the names, ages, residences, relationship, etc., of his dependents. Then, where pensions are allowed it should continuously observe the pensioners so as to stop or reduce payments upon proper contingencies. And it is a *sine qua non* of the success of a compensation law that all these things should be done justly, according to the law, without partiality, with the lowest practicable margin of error and at minimum expense—for the expenses will be very material. The means provided for performing these functions in Ohio and in Washington seem to me ridiculously inadequate. The idea relied upon that a few officials in a central office—with the aid of a few investigators in the field to look into special cases or of district physicians serving part time for fees—can effectually sift out frauds and exaggerations in such a mass of claims, shows that the magnitude of the problem has been wholly unappreciated. Of course a small force might handle the initial adjudication of claims by making all claimants prove their cases; but that would impose an unendurable hardship upon the working people, and would miss the great advantage of a simple compensation law, as

exemplified in England—which is that it results generally in the prompt payment of compensation without intermediate formalities.

Turning from the difficulties of doing what ought to be done under State insurance to the facilities that it offers for doing what ought not to be done, we naturally look to that exemplar of all imperfections—the Ohio law. We find there provisions for a board of three political functionaries, clothed with the power to award judgments for compensation against the insurance fund to alleged victims or alleged dependents of alleged victims of industrial accidents. From a judgment by that board a claimant may appeal, but neither the State nor a taxpayer. Here then is a single board to adjudicate conclusively against the insurance fund upon about 500 claims a month. For every claim rightly rejected or reduced a political enemy will be created; while for false or exaggerated claims allowed there will be no one personally and directly interested to object. It is then a not improbable prediction that the board will in time bend in the direction of allowing all claims—particularly as that would avoid the cost of investigation and thereby keep down the expense of administration, which expense it is now the fashion to regard altogether as economic waste. And if that board should bend at all from the strict line of duty, it is more than probable that it would bend far and avail itself to the full of its political opportunities, which are to distribute judgments for pensions according to political influences. If such misuse of its power by the board should be accompanied, as it naturally would be, by a prompt and sympathetic allowance of all just and meritorious claims, the support of the only class directly interested in the distribution of the insurance fund, *i. e.*, the working people—would probably be secured; and it is difficult to see what political check would act to stop the easy misuse of this scheme, until the exhaustion of the fund or the creation of a startling deficiency should arouse the general public.

My conclusion, then, is that in experimenting with State insurance we are playing with fire: that the course of State insurance is uncharted and runs perilously close between the Scylla of socialism and the Charybdis of organized graft.

STATE INSURANCE OF WORKMEN'S COMPENSATION FOR ACCIDENTS

Address of Mr. Frank E. Law

Vice-President, The Fidelity and Casualty Company of New York

After some years of discussion and preliminary investigation, followed by abortive legislative enactments in several States, a considerable number of the States, taking counsel from the mistakes made in the initial legislation, have passed joint employers' liability and workmen's compensation acts designed to overcome the constitutional difficulties and to possess characteristics that will lead employers and employees to accept the workmen's compensation system of compensating workmen for accidental injuries in place of the employers' liability system. The decision of the New York Court of Appeals, declaring the compulsory workmen's compensation act of that State unconstitutional, has pointed out to legislators the probable necessity of adopting elective or optional acts in default of amendment of the State and Federal Constitutions. The failure of the Massachusetts and New York elective or optional acts to meet with acceptance by employers or employees has indicated to legislators the probable necessity of enacting employers' liability legislation, concurrently with the workmen's compensation legislation, that will make the employers' liability system of compensating workmen for accidental injuries more costly than the workmen's compensation system and so induce employers to choose the workmen's compensation system.

The reason for the failure of the New York elective act seems to have been the fact that the act made it easy for employers to adopt the employers' liability system and relatively difficult to adopt the workmen's compensation system because of the cumbrous plan provided for securing employees' consents. The reason for the failure of the Massachusetts elective act is obscure, but it may have been

that the time was not ripe for it, men's minds not having gotten into a receptive attitude toward it because the advantages of workmen's compensation had not been sufficiently considered, or it may have been on account of the fact that no scheme of benefits was laid down in the act, employers and employees being left free to work out their own schemes. It was undoubtedly this outcome of the New York and Massachusetts legislation that caused the New Jersey Legislature to adopt an act which, in the first place, was elective and which, in the second place, by removing all of the employers' defences and thus making the employers' liability section of the act cost more than the benefits provided in the workmen's compensation section and by making the choice of the workmen's compensation section of the act easy, both employers and employees being presumed to have accepted it unless they gave notice each to the other that they did not accept it, ensured the quite general acceptance of the workmen's compensation section by employers as the method of compensating their workmen for accidental injuries. The fact that under the workmen's compensation system benefits were certain and immediate, being obtained without long drawn out and expensive litigation, was relied upon to cause employees to choose to come under the workmen's compensation section of the act.

The motives impelling the New Jersey legislators to draw their act on the lines they did doubtless impelled the California and Wisconsin legislators also. But the California and Wisconsin legislators seem to have lacked accurate information regarding the cost of workmen's compensation benefits. However that may be, the cost of the benefits under the workmen's compensation section of the California and Wisconsin acts will be greater than the cost of settling claims under the employers' liability section, so that it is not likely many employers will elect to come under the workmen's compensation section. Employers can scarcely be blamed for choosing the cheaper method, seeing that they are in competition with employers in other States having no such burden.

The States of Kansas, New Hampshire, Illinois, and Massachusetts have passed workmen's compensation acts which are not yet effective and of which I shall not speak at this time, not having had opportunity to study them closely as yet. The liability insurance companies are kept busy nowadays by the new laws, and can get through their work only by taking up each new duty as it comes to hand. They have no leisure in which to anticipate things. Nor shall I speak of the Montana and Nevada acts, although they are now effective. To the Washington and Ohio acts I shall refer briefly later.

Whatever may be the outcome of these various measures, whether it turns out that they are constitutional or unconstitutional, one fact stands out clear, and that is that workmen's compensation in one form or another will surely be adopted in this country as the method of compensating workmen for accidental injuries. Sooner or later a measure that is both constitutional and practical will be devised, or, if this cannot be done, the constitutions will be amended. The workmen's compensation movement is a world movement, and in the eyes of the community the employers' liability system stands condemned by both justice and humanity.

While the constitutionality and practicability of the workmen's compensation acts that have been passed are still in doubt, it is proposed to take a radical step and abandon insurance of workmen's compensation by private companies, substituting in its stead State insurance of workmen's compensation. The State of Washington has enacted a compulsory State insurance workmen's compensation law and the State of Ohio has enacted an optional State insurance workmen's compensation law. In several States the providing of State insurance is in contemplation. Three arguments appear to be advanced in favor of State insurance,—first, that State insurance has worked well abroad; second, that the State can furnish insurance cheaper than can private companies; and third, that the insurance companies are overcharging for insurance.

The community then is confronted with this very practical question,—shall it or shall it not adopt State insurance of workmen's compensation for accidents? Which is superior and to the greatest advantage of the community in the long run,—insurance by private companies, stock and mutual, or insurance by the State?

It may be admitted at the outset that no limitation can properly be put on the functions of government except the comprehensive one of expediency. There is justification for the assumption by governments of whatever powers that conduce to general convenience and welfare.

Nevertheless, the experience of mankind is favorable to the view that government agency should be restricted to the narrowest possible compass and that government interference with the business of the community should be admitted only on the strongest reasons. "Let alone" should be the rule, every departure from it, unless required by some great good, is certain to produce evil.

The extension of government agency is objectionable because it diminishes the field for the active exercise of men's talents and energies and so gives lessened opportunity for the development of their faculties. Men are made strong and able to overcome difficulties by attacking difficulties, not by avoiding them. The men the community wants are the men able to do things for themselves. Men who habitually have things done for them become mere creatures of habit and routine and lose enterprise and initiative. The progressive movement is paralyzed by doing things for men that they should do for themselves. It is best to leave things to private enterprise as far as possible, because that tends to produce a strong and self-reliant people. The genius of the American people is to insist that each man shall do for himself whatever is needed for his well-being and not depend upon his fellow. This argument will seem to many purely theoretical and to range too far afield to be of practical import. But is this so? The law of life is competition, the striving each with the other as to who will produce the best results. Our civilization, and all that is best in it, has been built up under

a system of individualism. Are not departures from the individualistic system then, the system under which success has been attained, to be resisted?

Things done by government will not be as well done as things done by private agency. Interest in the result will be lacking. People understand their own business better and manage it better than any government can or will. The most powerful motive to secure economy and capable administration is self-interest. Moreover, when things are left to private agency they will tend to fall into the hands of those who can attend to them better and cheaper than any other persons.

So much for the general principles bearing on the question.

What now shall be said in particular regarding State insurance of workmen's compensation for accidents?

First. That whatever is gained by making insurance with the State compulsory upon employers and thus eliminating the business-getting expense of the private insurance companies will be more than offset by the inability of the State to cope as effectively as the private insurance companies with the fraud, malingering, and simulation so characteristic of numerous claimants under workmen's compensation acts. The difficulties of administering the State insurance fund will be enormous. Honest and fraudulent claims will have to be sifted out from the great mass of claims made. Ambulance chasers and damage-suit attorneys will have to be checkmated. Is it likely that the subordinate State officials will develop the ability to handle these capably? The motive of self-interest will be absent. The necessity for economy will not be felt. The choice of State officials will be dictated by politics and their greatest chance of securing popular favor will be to make the disbursements as large as possible. There will be little or no check on State officials. To secure the proper weeding out of fraudulent and excessive claims, there is needed the operation of opposing interests and this situation can exist only when the insurance is supplied by private companies. Under our system of government, the tenure of

office of State officials is dependent largely upon the popular will, so that the thought uppermost in the minds of the officials distributing the workmen's compensation benefits will be to please the claimant and his friends rather than to make proper adjustment of the claim. Unless there be opposing interests, sight will soon be lost of the fact that the claim is simply a legal obligation, and not charity; and sentiment, not justice, will rule in the settlements. Some one will have to pay the bills, the State cannot create wealth, and that some one will be the consumer and the taxpayer. Does any one want to see the prices of the goods he buys and the taxes he pays increased in order to satisfy fraudulent and excessive claims? Clearly it is in the interest of the poorest, as well as the richest member of the community, that the cost of workmen's compensation shall not be increased by dishonest claims. Private companies will ferret out these and avoid payment of them with far greater efficiency than the State. Another source of great expense in State insurance will be the multiplication of officials and employees beyond reason. And these officials and employees will not be so competent and diligent as those of private companies. The business will not have the careful attention it would have in private hands.

Second. That State insurance will be against the interest of the community because it will tend to the building up of a great political machine. The cohesive force of the desire of claimants to collect the utmost possible sums from the State will be very great and will be bound to introduce into the body politic a dangerous element possessing much power. There can be little doubt that the officials and employees charged with the responsibility of administering the State insurance fund will be responsive to this element in a noteworthy degree.

Third. That State insurance will put the greatest possible strain upon the State administrative machinery because of the disbursement by State officials of huge sums of money practically without check. The adjustment of claims will be made here and there all over the State under

circumstances that will demand honest and competent officials. The dangers of partisan or corrupt administration of the great insurance fund are very considerable. And even if partisanship and corruption are absent, inefficiency in administration may wreck the fund.

Fourth. That agencies of government should be adapted to the imperfections of human nature. The imperfections of human nature necessitate the organization of society on a competitive basis instead of on a socialistic basis. Competition involves a lot of effort that in one sense is wasted, but is the price that society has to pay to secure the best results as human nature is constituted. It is not possible to measure the relative advantage or disadvantage of a thing solely by the amount of expense it entails. Expense must often be incurred to secure efficiency and to induce men to put forth their best efforts. State insurance will not work because of the imperfections in human nature.

The idea that State insurance has worked well abroad seems to be negatived by the testimony of Herr Ferdinand Friedensburg who recently retired from the post of President of the Senate of the Imperial Insurance Office of the German Empire after a service of twenty years. Regarding this testimony, the *New York Times* of July 9, 1911, says in an editorial:

> "It is practically a series of charges of which these three are most significant: The first is that the State insurance, especially designed to replace pauperism and charity, is itself merely pauperism under another form. The second charge is that it has fostered to an incredible extent the German evil of bureaucratic formalism. The third and the worst charge is that it has become a hotbed of fraud, and, therefore, a spreader of demoralizing practices and ways of thought. As to the first charge, he alleges that almost from the beginning it was found difficult to secure fair and honest adjudication of claims. The principle of giving the benefit of doubt to the claimant came into early operation, and the claims under its insiduous influence multiplied in number and became less and less valid. The workmen began to come as beggars

asking and expecting the insurance laws to be stretched in their favor. The expenses of the system continued to grow as the force required increased. Not only has the force increased, but under the pressure of the claimants it has been inefficient and wasteful, so that the general costs, per insured, have increased 50 per cent. since Herr Friedensburg has been in the service, while the work of inspection and regulation undertaken by the Government has steadily deteriorated."

After all, what else could be expected? The struggle for existence is hard and presses so heavily on working people that it is not surprising that many of them yield to the temptation of seeking to secure more than is due them or that to which they are not entitled under the workmen's compensation law, or that the officials having no personal interest at stake give way to their sympathies and sanction the payment of improper claims. As has already been pointed out, there is but one remedy for this state of affairs, and that is the operation of opposing interests which is supplied when private companies grant the insurance.

It is difficult to understand how the idea arose that the liability insurance companies are overcharging for workmen's compensation insurance. Apparently there is no better basis for this idea than the dissatisfaction of employers arising out of having to pay more for workmen's compensation insurance than for employers' liability insurance. As a matter of fact, the rates made by liability insurance companies for workmen's compensation rest on the sure foundation of experience. Workmen's compensation insurance is no new thing to the insurance companies; they have been transacting it for years, under the name, however, of workmen's collective insurance. It differed no whit from the insurance now offered against the workmen's compensation benefits established by law except that the benefits offered were much more moderate. Workmen's compensation insurance, or workmen's collective insurance, is simply personal accident insurance written on a number of workmen collectively. The workmen's compensation rates were deduced from experience derived from three

sources: (1) data of deaths, permanent disabilities, and temporary disabilities, relatively to the exposure under workmen's collective policies; (2) data under employers' liability policies having a wage exposure of $3,743,968,000 in the United States; and (3) data under personal accident policies. Commissions to agents and brokers have been cut and the business-getting expense has been reduced to a minimum. But 2½ per cent. underwriting margin has been allowed for profit and contingencies. There will be some investment profit due to premiums being paid in advance, but it is impossible to say what this will amount to until it is seen at what rate the losses will mature.

Rates in this country must necessarily be higher than abroad, because:

First. The higher benefits here. In Germany the benefits prior to the expiration of the thirteenth week are paid by the sick benefit societies and do not come out of the accident benefit funds of the employers' associations. Necessarily this affects the charges for insurance by the employers' associations to no inconsiderable degree. In Great Britain the maximum benefit payable is $5 a week, here it is quite generally $10 a week. To some extent, of course, this is offset by the lower wages abroad, for it will be borne in mind that rates are applied to wages in calculating the premiums.

Second. In Germany the insurance charges are made on the assessment plan. Not enough is collected in each year to extinguish the claims arising out of the accidents of that year. The consequence is that the reserves carried are not sufficient to liquidate the existing liability. The rates must therefore steadily rise. This is pointed out by Messrs. Ferdinand C. Schwedtman and James A. Emery, who say in their book, "Accident Prevention and Relief", pages 146 and 147:

> "It will be seen that most of the insurance rates are extremely high as compared with employers' liability insurance rates in the United States. In fact, German rates are higher than present workmen's indemnity insurance rates in England, especially when

we bear in mind that the German insurance system provides only for a small portion of deferred payments. Each year's assessment covers the actual cost of that year, plus approximately 10 per cent. for reserve fund, consequently the cost will increase each year because the new permanent injuries are added each year to the existing old ones.

"We have asked a number of prominent men what the final and permanent cost of insurance will be. While this is a difficult question to answer accurately, Professor Dr. Manes gave us the estimate which is illustrated in Figure 114. (This figure shows that the cost in 1935, when it is supposed the maximum and final cost will be attained, will be double the present cost in the year 1908.) * * * * 'A number of experienced officials of employers' associations feel that Dr. Manes' estimate of nearly double the present cost is too high, but other equally good men consider the figure very conservative. If we consider the estimate as correct, it would mean that in order to cover deferred payments, we must practically double each one of the insurance rates shown on the preceding pages."

It will be perceived, therefore, that an entirely different situation exists in this country from that in Germany. Here insurance companies are obliged to collect premiums sufficient to liquidate all the claims that may arise under the policies written, putting aside adequate reserves for the deferred losses. Insurance companies here are not permitted to rob Peter to pay Paul, as is done by the employers' associations in Germany; that is, future employers cannot be loaded here with losses that ought to be paid by present employers. The German plan will not commend itself to the American people as just.

Third. The accident frequency is higher in the United States than abroad. This has been shown by Mr. Frederick L. Hoffman, Statistician of the Prudential Insurance Company, Newark, N. J., in a paper on "Industrial Accidents", published in the Bulletin of the Bureau of Labor of the United States Government, Washington, D. C., No. 78, September, 1908, page 458. The larger number of acci-

dents occurring in industries in the United States makes the cost here higher than abroad.

Fourth. More care to prevent accidents is taken abroad than in the United States and more money is spent on factory inspection abroad than in the United States. The accident frequency is directly related to these conditions. This less care in the United States necessarily makes the workmen's compensation cost higher here.

Further, as respects costs, Messrs. Schwedtman and Emery say in their book on "Accident Prevention and Relief", page 131:

> "Some enthusiasts would tell us that equitable compensation would cost less than our present employers' liability system. If we take into consideration harmony, human happiness, health, and whole bodies, there is no answer to such an argument, because money cannot buy these things, nor can money compensate for their loss. However, the cost in dollars and cents of an equitable compensation, as expressed in insurance rates, is much higher than our present employers' liability method. This, at least, has been Germany's experience, and we cannot hope ever to have a more efficient system than Germany has now, as shown in various diagrams on other pages."

The insurance companies deserve praise, not blame; help, not hindrance. In a difficult situation, where costly laws have been enacted and where there is the gravest danger that their estimates of the cost will be exceeded, they have undertaken to carry the burden and distribute the costs over the community, guaranteeing that they will themselves pay the amount their estimates are exceeded. The popular conception is that the liability insurance companies have derived large profits from their business. This is not the case. A few can show a balance on the right side of the ledger, but most of them will show a loss when all of the claims have been liquidated. It is probable that many companies would have become insolvent had it not been for other lines of insurance written which were profitable.

Lincoln is credited with the saying that "it isn't wise to swap horses when crossing a stream". That saying is applicable to the present situation. The country is substituting the workmen's compensation system for the employers' liability system of compensating workmen for injuries received in industrial accidents, and before any test has been made of the new system and before it is known whether or not it is properly planned and will work well, it is proposed to abandon insurance by private companies in favor of insurance by the State. Instead of swapping the insurance-by-private-companies horse for the State-insurance horse while crossing the stream from the employers' liability shore to the workmen's compensation shore, will it not be wise to wait at least till the stream has been crossed? It may be found that there is an alternative to casting aside the companies that have done their work well and putting the community astride the dangerous and uncertain experiment of State insurance. Is not that alternative the supervision of insurance rates by the State?

This alternative to State insurance is well worthy careful study by legislators. The administrative machinery of the State is greatly burdened now, and with the added burden of State insurance, it is likely to break down entirely. Things may become too big for even the most capable elective officials responsible to the people to supervise adequately. Competitive conditions supply a self-regulating principle that makes insurance by private companies work properly, but no such self-regulating principle exists where insurance is a monopoly controlled by the State.

I do not mean to suggest that the State should undertake to fix directly the rates at which the companies may write business. It is not feasible for the State to acquire the knowledge or the equipment to do this properly. The companies have employed trained men who have made the business their life work, and yet they have not been able to work out satisfactorily the making of rates. Is it credible that the State shall succeed in doing better when

it cannot possibly command the services of the men whose ability in this field will find more lucrative and congenial employment in private enterprise?

What I do mean to suggest is that the companies be permitted to form rate-making associations and that these associations be put under the supervision of the State. These rate-making associations shall tabulate and combine the experience of their members and shall study this combined experience and ascertain rates which shall be as fair and just to the various risks as possible. These rates shall be published and the rate manuals shall be purchasable by anybody. Any company shall be free to join the rate-making association and to use its rates, but no company shall be compelled to do so. The rate-making associations shall be equipped with the proper machinery to rate risks up or down, as the experience on such risks indicates to be proper. The object of this special rating system is to give employers who exercise great care to prevent accidents and who equip their plants with safeguards the advantage of a lower rate and on the other hand to penalize employers who fail to exercise care and to equip their plants with safety devices. The idea is that each insured shall make a contribution to the insurance fund proportionate to his hazard. Each insured who is dissatisfied with his rate shall possess the right of appeal or hearing before the governing or rating committee or other proper executive of the association so that he may make application for a change in his rate and have the data on which his rate is based reviewed. The association shall keep a careful record of its proceedings and shall furnish upon demand to any person, or to his authorized agent, full information regarding his rate. The association shall be subject to the visitation and supervision of the superintendent of insurance of the State and shall be examined at least once every year by the superintendent.

It is believed that this method of dealing with the business will result more satisfactorily to the community in the long run than prohibition of rate-making associations by anti-compact laws or than State insurance.

Combinations of experience and comparison of views by experienced underwriters long in the business are needed to make rates equitable for the hazard, because no one company possesses sufficient data or sufficient information to make rates that do not discriminate unfairly between classifications. The making of equitable rates demands cooperation. Moreover, the rates are needed for all companies and expense is saved by all the companies doing the work together and avoiding duplication.

Let it be noted also that open competition between the companies in respect to rates results in discrimination between insured of the same class. Insured of the same hazard will some of them get lower rates than others when the companies are fighting for business. Open competition also results eventually in a weakening of the companies. No one will gainsay the proposition that one of the chief concerns of the buyer of insurance is that the company from which he buys shall be able to pay its losses when they accrue. The buyer of butter, or eggs, or steel, or oil, can test the quality of the goods at the time of purchase, and it is no concern of his that the seller has sold at an inadequate price and bankrupted himself. Delivery by the seller antedates payment by the buyer, and the buyer is secure. But the buyer of insurance is in a different position. It is a matter of concern to him that the seller shall remain solvent, for it may be years before he calls upon the seller to settle a loss due him. Here payment by the buyer antedates delivery by the seller, and the buyer is not secure. For instance, it takes on the average eight years to liquidate the claims under the liability policies written in any given year, and the California and Wisconsin workmen's compensation acts require the payment of death benefits any time within fifteen years after the date of the accident if the death was approximately caused by the accident. It is only by securing adequate rates that the seller of insurance can continue solvent, for in the long run the premiums of an insurance company must suffice to pay losses and expenses.

The alternative to open competition is combination not merely to make, but to maintain rates. This, however, does not mean the creation of a monopoly. The attainment of a monopoly is not possible to insurance companies. An insurance company cannot, like an industrial corporation, get control of the available supply of raw material, or, like a railroad, dominate a given territory. Any group of men with sufficient capital may embark in the insurance business. The moment insurance companies put their rates beyond a reasonable point, they invite disaster from the competition of mutual companies and new stock companies. Besides, though competition in rates be restricted in the interest of avoidance of discrimination between insured and in the interest of the security of the policyholder, there still remains the competition of service between the companies, which is and always will be exceedingly keen.

In considering this matter of rate-making associations I would recommend for your careful perusal the report of the Merritt Commission of New York State on fire insurance published this year, 1911, under the title "The Complete Report of the Findings of the Joint Legislative Committee of the State of New York covering the Subject of Fire Insurance, including the bills recommended for introduction into the Legislature", particularly pages 42, 43, 44, and 78;* Chapter 460 of the Session Laws of the State of New York of 1911, entitled "An Act to amend the insurance law, by providing for the regulation and supervision of rate-making associations" (this, however, relates only to fire insurance rate-making associations)*; and the paper entitled "State Regulation and Control of the Business of Fire Insurance", read before the Fire Insurance Commission of the State of Illinois, May 20, 1910, by J. D. Browne, President of the Connecticut Fire Insurance Company, of Hartford, Conn., particularly pages 25 to 31 inclusive, beginning with "State Control".*

For the sake of emphasis, I repeat that the authorization by the State of combination not merely to make,

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*See Appendix.

but to maintain rates through rate-making associations does not mean the elimination of competition. The character of the business differentiates insurance rate-making associations from so-called trusts. Excessive rates are avoided by insurance companies because excessive rates invite competition by the entry of new companies into the field and also tend to cause the dissolution of the association. Only such companies as feel that the rates recommended by the rate-making associations are necessary for their continued existence will remain members of the association. The public will have the choice of buying insurance from the association companies and the non-association companies.

To secure the utmost economy in the conduct of the business, it is indispensable that the companies shall be empowered to agree through their rate-making associations what commissions they will pay to brokers. Open competition in respect to commissions is fatal to economy and leads to heavy increase in cost to the policyholders.

In conclusion, I wish to make a plea for fairness and justice in the treatment of insurance companies. It is popular to condemn insurance companies unsparingly, but is it fair or right? The liability insurance companies are wrestling with many difficult problems which they are making a manful effort to solve and are, I dare maintain, making satisfactory progress. They are doing excellent work in preventing accidents and in helping solve the problem of workmen's compensation for accident and are taking measures for cutting down the cost of insurance. If they are helped by the State they will work out solutions satisfactory to the community. Is it not worth while to give them the chance rather than to embark on the dangerous and uncertain enterprise of State insurance?

APPENDIX

Extracts from the report of the Merritt Commission of New York State on fire insurance published 1911 by the "Weekly Underwriter" under the title "The Complete Report of the Findings of the Joint Legislative Committee of the State of New York Covering the Subject of Fire Insurance".

From pages 42, 43 and 44:

"As this subject of rating has turned out to be so comprehensive, it is desirable to make a summary of the whole matter. First, it is recognized that a rate equitably should depend upon the hazard; that the hazard, however, is known in general only by experience; that for this no one company has a broad enough experience of its own and that therefore the making of equitable rates demands co-operation; furthermore, since the same rates are needed by all the companies, economy would suggest that the work should not be duplicated.

"Second, it has been demonstrated by the experience of all times and all places that open competition in fire insurance is an unstable condition which leads to a general weakening of the companies, and eventually to the elimination of small companies, further that under open competition there is always discrimination in favor of the policyholder with influence.

"The only alternative to open competition is, however, combination not merely to make but to maintain rates. This in general or certainly to a degree makes it impossible for the public to obtain insurance except at the prices fixed by the combination. The inability to bargain is resented by the public and the rate-making organizations have been referred to as trusts and combinations in restraint of trade, and in many States so-called anti-compact laws have been passed forbidding the companies to combine either to make or maintain rates.

"Third, the effect of the anti-compact laws has been not to bring back a state of open competition, for this, as has been said, is an impossible condition, but to introduce a weakened substitute for combination, the selling of 'advisory' rates by an independent rater. These rates in general are observed, but as the companies are under no agreement to maintain them, the way is open to gross discrimination. The tendency of independent rating is in general toward higher rates and toward a weakening of the beneficial economic effects of schedule-rating. The discrimination in anti-compact States has become so offensive that there is a strong movement toward State regulation.

"Fourth, State regulation is recognized as a far more logical condition than anti-compact, and in the main the objections to it are practical rather than theoretical. The principal question to decide is whether the conditions warrant so radical a step and whether it is likely that conditions would thereby be materially improved.

"The most serious theoretical objection to State rating is that it would be very likely to make it impossible for a company to recoup itself after a conflagration. The practical objections lie in the possibilities of its being used for political effect and the fact that the State does not possess and could not obtain, except with great pains and expense, the expert knowledge upon which to make rates properly.

"Fifth, it does not appear that there has been an excessive profit in the business; this would seem to indicate that the premiums have on the whole not been too large. Discrimination between classes is, however, found to exist, particularly in the too high rating of 'preferred risks'. These are conditions, however, which will be cured by publicity, and the general tendency toward equitable rating is unmistakable.

"Sixth, not only is combination necessary for equitable rating, but conversely the making of equitable rates is the consideration which should be demanded of the companies for the right to combine.

"Seventh, it is believed that competition and publicity are sufficient to insure this, particularly as the manifest tendency of schedule-rating is in this direction.

"Eighth, it is shown that there is intense competition among the members of rate-making organizations and that this condition differentiates such organizations from so-called trusts, that excessive rates are not desired as tending to lead to a dissolution of the combination and also to the organization of new competing companies and that a strong competition exists in most parts of the country from non-Board and Mutual companies.

"Ninth, as the companies have failed to co-operate in collecting a common loss-experience which would serve as a basis for equitable rating, it is believed that steps should be taken towards the acquirement by the State of such statistics.

"It is the belief of this committee that, in the present condition of business, competition can be relied upon to keep the rates equitable, particularly if re-inforced by publicity. This committee fails to find any condition which would warrant the extreme step of turning the rate-making over to the State, and it does not recommend State regulation of rates beyond certain steps looking toward closer supervision of rate-making bodies and the securing of proper publicity. The committee believes that State interference with rates has not been beneficial and has been brought about upon the wholly theoretical grounds that combinations in fire insurance were a menace to the people, which an actual investigation of the facts fails to disclose. This committee believes that a purely academic view of what combinations in fire insurance might do should not be allowed to usurp the place of what actual facts under a reasonable interpretation seem to show."

From page 78:

"As to the so-called anti-compact law: For the many reasons given, your committee believes that it would be most unfortunate for the public if a condition of open competition in rates were forced by the State. The safe policy

to follow in treating this subject is to recognize the good which flows from combination well regulated; to permit the companies to use rating associations and bureaus to develop the principle of schedule-rating and to spread the cost of determining proper rates among the companies, and to permit them to agree to maintain those rates.

"It is, therefore, recommended that no anti-compact bill be passed, but that in place thereof a statute be enacted that will permit combination under State regulation, such regulation to stop short of actually fixing the price at which the companies shall sell their insurance, but which shall be of such a positive nature that all forms of discrimination in rates will cease; such statute to provide for the filing by such associations and bureaus of all schedules and specific rates with the Insurance Department, and also that all such associations and bureaus shall be subject to the closest supervision by the Superintendent of Insurance, and further that all such associations and bureaus shall keep careful records of their proceedings, and provide for the hearing of interested property owners who feel aggrieved at the rates charged—all to the end that the potent power of publicity may operate freely to cure any arbitrary action or indefensible methods."

Chapter 460 of the Session Laws of 1911 of the State of New York,—

An Act to amend the insurance law, by providing for the regulation and supervision of rate making associations.

Became a law June 28, 1911, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," is hereby amended by inserting in article three of said chapter a new section, to be section one hundred and forty-one thereof, and to read as follows:

§ 141. Rate Making Associations. Every association or bureau which now exists or hereafter may be formed for the purpose of making rates of fire insurance on property located in this state shall be subject to the visitation and supervision of the superintendent of insurance, who shall cause an examination of each such association or bureau to be made at least once a year, and shall make public the results thereof, and shall report to the legislature in his annual report on the methods of such associations or bureaus and the manner of their operation.

Every such association shall file with the superintendent of insurance any schedules of rates or such further information as he may require.

No such association or bureau or any person, association or corporation authorized to transact the business of fire insurance within this state shall fix or make any rate or schedule or any credit therein which is to apply to any risk on the condition that the whole amount of insurance on such risk or any specific part thereof shall be placed at such rate, or with the members of or subscribers to such association or bureau; or shall fix or make a schedule of rates or charge a rate which discriminates unfairly between risks within this state of essentially the same hazard belonging to classes having substantially the same fire class record, and which are similarly situated and protected against fire; whenever it is made to appear to the satisfaction of the superintendent of insurance that such discrimination exists he may, after a full hearing either before himself or a special deputy appointed for such purpose from the salaried employees of the insurance department whose report he may adopt, order such discrimination removed, and all such associations, bureaus, persons or corporations affected thereby shall immediately comply therewith; no such association or bureau nor any two or more persons, associations or corporations authorized to insure property against loss by fire within this state, acting in agreement, shall refuse to do business with or pay commissions to any person who may be licensed by the superintendent of insurance as a fire insurance broker, upon the ground or for the reason that such broker

will not agree to secure insurance only at the rates of premium fixed by such association or bureau.

Every such association or bureau shall keep a careful record of its proceedings and shall furnish upon demand to any person on whose property a rate has been made, or his authorized agent, full information as to such rate, and if such property be rated by schedule a copy of such schedule; it shall also provide such means as may be approved by the superintendent of insurance whereby any person or persons affected by such rate or rates may be heard, either in person or by agent, before the governing or rating committee or other proper executive of such association or bureau on an application for a change in such rate or rates.

§ 2. This act shall take effect September first, nineteen hundred and eleven.

Extract from a Paper, entitled "State Regulation and Control of the Business of Fire Insurance", read before the Fire Insurance Commission of the State of Illinois, May 20, 1910, by J. D. Browne, President of The Connecticut Fire Insurance Company of Hartford, Connecticut, pages 25 to 31, inclusive,—

"State control. Finally and more important than all others, are the questions you ask in Paragraphs 1, 2, 9, and 10 of your communication:

"No. 1. (*a*) Your reasons for or against the state making rates; (*b*) the state supervision of rates; (*c*) any state control over rates or rate making.

"No. 9. Do you think the state should interfere in any way with the free and unrestricted operation of business; and should the companies be allowed to continue in the matter of rates without any restrictions whatever?

"No. 10. Why should not the state undertake the business of fire rating, get it upon some decent basis so that it would be as equitable as possible, and then require all fire insurance companies to collect the rate, no difference under

what form the business is done, whether by corporations, associations, or individuals?

"In reply I would say, in my opinion, the state overreaches the fundamental objects of its being and hampers commercial interests when it attempts supervision of any legitimate business, except where business methods involve oppression or fraud or unreasonable restraint of trade.

"Monopolies created by the state are, in a measure outside of this rule and are clearly proper objects of supervision in the matter of service and rates. Railroads and railways, with monopolies of routes or exclusive rights on highways, gas, electric, and water companies, with exclusive territories, are examples. By granting the right to exercise the prerogatives of the sovereign and to enjoy exclusive monopoly in particular lines, the state reposes in these companies a trust, whose beneficiaries are the public and whose fulfillment is the proper object of governmental review. *Insurance companies do not come within this class in any sense.*

"Monopolies not created by the state, but developed from trade conditions and combinations, may result in such suppression of competition and free commerce as to oppress rivals or the consuming public, and the resulting conditions may call for state interference. The remedies offered by the common law for such conditions may not always be adequate, but attempts at legislation, such as the Sherman Act, show the difficulties and dangers of general enactments upon these lines by legislative bodies.

"The business of fire insurance enjoys no state-given monopoly; the field is open to any man or body of men. In this country the business seems to be too hazardous and complicated to tempt men to engage in it, otherwise than through corporate organization. The states offer to the capital disposed to venture in this line, the right to engage in it under the corporate form. Such incorporation involves no monopoly of the business. The franchise granted is merely the right to *be* a corporation for the purpose of the business. Many, if not most, of our manufacturing and commercial enterprises enjoy the same kind of franchise. A combination of capital engaged in this line, as in other lines, might, for the time being, reach

the point of oppressive monopoly, but the permanence of such a condition is hardly conceivable. Insurance managers cannot corner the sources of supply, or control the means of transportation, as perhaps can be done, and perhaps has been done, in a measure, in certain lines of business which handle natural products, such as oil and iron.

"In fire insurance, so long as the prospective pecuniary returns are sufficient to attract capital, the field is open to all comers. The only restraint against a destructive competition is the sense of self-preservation, which refuses to allow the business to run riot to the pecuniary loss of the investor and to the jeopardy of the insured. Protection of the insuring public demands conservative methods and a recognition on the part of the underwriters of an obligation in the nature of a trust toward the insured in the accumulation and conservation of resources sufficient to meet the inevitable crises.

"Such a situation, in a business open to general competition, calls for *no interference or assistance* on the part of the state in the working out of its complicated business problem.

"The state does supervise—and properly supervise—the concerns engaged in this business in the same way it supervises banks and other financial institutions, for the purpose of testing their solvency and the integrity of their management. This is done presumably in the interest of the great body of persons with whom such institutions deal and who, as a class, are not competent to test their solvency or integrity.

"Some states have gone a step further in prescribing a uniform contract. The reason for this is apparent and perhaps sound. An insurance policy is necessarily a complicated and confusing contract, whose form readily lends itself as a cover for ambiguous or even oppressive provisions not easily comprehended by the average insurer. To protect the insurers from the consequences of their own ignorance or carelessness in entering a contract of so technical a character, the state endorses and enforces a particular form, which through repeated court constructions, has become fairly well understood.

"The proposition that the states step in between the parties to the contract, for the purpose of regulating the price of insurance, or otherwise limiting the freedom of contract in the

purchase and sale of insurance, is an entirely different proposition and *is not justified by the same or any similar excuse.*

"I do not discuss the question as to how such a proposition can be carried into effect without offense to the fundamental law, further than to suggest that it may not be done by attempting, in individual cases, to reform, and, consequently, impair the obligation of contracts already made, nor by compelling the insurer to write insurance upon terms which the insurer is unwilling to assume. It must be done, if at all, through the establishment, by some official rate-making bureau, of table rates, accompanied by a denial to the insurance companies of the right to do business, unless they limit their contracts by such established tables. In other words, the state must equip itself to master the technique of a business which has commanded, and still commands, the brains and energy of trained men, who have made the subject a life work, and, furthermore, the state must succeed in reducing the business of classifying and fixing rates to definite and arbitrary standards, a thing which the insurance companies have never yet been able to accomplish fully. It is difficult to comprehend why the state should be expected to secure service which should be more successful in reaching fair results than the insurance companies. The state is without equipment for such work. It cannot secure the services of the men whose ability in this field commands more lucrative and congenial employment. There can be no assurance to the public that such work would, in the long run, be handled with greater intelligence or integrity. Such control by officialdom of a business whose complications and technicalities are almost unequaled, must not only fail of any permanent benefits to the insuring public, but cause withdrawal of capital from the business, and the state will have the opportunity and privilege of experimenting with its own money."

IS THE STATE TO COMPENSATE INJURED WORKMEN?

Address of Mr. S. H. Wolfe, Consulting Actuary

Whether the State is to undertake the employers' liability business to the exclusion of private companies will largely depend upon the attitude of the companies and their willingness to co-operate with the State in the solution of this economic problem.

The business of issuing employers' liability policies in the United States has assumed large proportions; it represents over one-half of all the liability business transacted. In these circumstances it is not difficult to see that the question of State insurance is of vital interest to underwriters.

Epidemics are not confined to diseases. Economic truths and principles, although recognized for many years, may have been permitted to lie dormant. Of a sudden some individual or community determines to test practically the theories which have been advanced for years. Incidentally, other individuals or communities become imbued with the same ideas, and before long the experiment becomes the accepted order of things, and we wonder how we were ever content to get along under the old conditions.

Such is the history of State insurance. For many years governments elsewhere have recognized the fact that every avenue of human activity was affected by the wear and tear on human life caused by the changes in industrial conditions. Compensation for accidents occurring in certain selected occupations or trades has been known for over a century, but Germany was the first country to institute a system of accident compensation applicable to its great body of industrial workers. We may therefore point to this movement, which took place in 1884, as the beginning of the movement which is now of

so much interest to us. Other countries, quick to realize the justice of the idea and the improvement which it would bring to their inhabitants, followed in Germany's footsteps; these enactments were not confined to the largest countries, for we find British Columbia, Cape of Good Hope, Queensland, Transvaal, Alberta and Quebec among the communities which have enacted appropriate laws.

At last in 1910 the State of New York awakened to its responsibility and placed upon its statute books an Act applicable, however, to eight hazardous occupations only. In the opinion of the learned Court of Appeals of that State, the Act was unconstitutional and therefore void. While the Act may not have been good law (the constitutionality of a similar statute in Washington has just been upheld by the Supreme Court of that State), it did serve the purpose, I think, of bringing the question squarely before the people, not only of New York, but of the United States generally. It served, in my opinion, as a quickener of the public pulse, as an inspiration to legislative bodies, and perhaps as a guide to them in the preparation of Acts which may meet with a greater degree of judicial approval. In a number of the States commissions have been appointed for the purpose of studying methods of compensating those who are injured during the course of their employment, and in several of the States we now find systems broader in their application than the New York law and approaching in some respects the European standards.

Heretofore the question of State insurance may have appeared to the companies transacting liability insurance in this country as a fad, as a form of socialistic doctrine, as an interference with the right of contract, as a discourager of thrift, as an encourager of malingering and intentional accidents. No matter what your opinion may have been, it is quite evident that a majority of the people is convinced of the justice of the demand of those who wish the wear and tear on human life to be assessed as a part of the cost of production in the same way that the

manufacturer includes the cost of the wear and tear on his machinery. As underwriters you must face that situation and cut your cloth accordingly. As intelligent citizens better equipped to deal with the technical side of this question than are many of the people who frame the statutes, it becomes your duty to consider this question apart from its immediate effect upon your business, in order that the maximum good and the minimum harm may result from the statutory enactments.

We should, I think, be fooling ourselves did we not come to the conclusion that before long we shall find upon the statute books of every State some law dealing with the question of workmen's compensation, and that the treatment will be along the lines of the enactments to be found at the present time in European countries. When that time comes the funds for the purpose of compensating the injured will be derived in one of two ways:

(a) The State will collect from the employers a certain percentage of their payrolls and will provide the machinery necessary for the investigation of claims and the payments of benefits.

(b) The State will content itself with the enactment of laws specifying the basis of compensation, and will permit the employer to distribute the benefits in accordance with such enactment.

Before discussing the advantages and disadvantages, the merits and demerits of the foregoing, it may prove profitable for us to consider a few of the facts which have led to the present situation:

Employers' liability insurance was the natural and logical outgrowth of industrial conditions. When the number of employees working for an employer was small, the question of compensation for injuries was comparatively simple. He whose carelessness caused the injury should be held responsible for the damage resulting therefrom, is a doctrine which in simple communities is easy of enforcement, works no hardship and creates no unjust conditions. In such circumstances it is not impossible to follow the reasoning which held that an employer should

not be held responsible for injuries caused by the negligence of a fellow employee; it is not unreasonable in these circumstances to believe that an employee should be expected to appreciate the risks inherent in and peculiar to the employment which he has elected to accept. When the workshop was small it was not unreasonable to hold that the lack of safety devices was realized before the employment was accepted, and that the employer should not be held responsible for his failure to install these safeguards, especially if, as in many cases, he worked side by side with the employee.

But all of these conditions have changed. No longer is the old intimate relationship between the employer and the employee maintained; the birth of corporations created conditions not dreamt of in the day of the individual employer. The development of the use of power in plants, the increase in the number of employees in each plant and the general labor conditions have created changes to which it seems the law was the tardiest to give recognition; in fact in some of our States at the present time employees are permitted to plead the defences which today no right thinking man considers applicable in the slightest degree to industrial conditions. Doctrines which were just and equitable a century ago are inequitable and obnoxious today.

What was more logical, therefore, than the creation of the employers' liability insurance company? It served a two-fold purpose, first, by distributing the losses over a large number of risks it enabled the individual insurer, by the payment of a reasonable premium, to guard against the disastrous effects of an unusually severe accident, and, second, it placed at the disposal of the insured a highly developed machine skilled in the application of those defences which the law recognized as a bar to recovery by the workmen in the event of injury. By this second reason I intend to cast no reflection upon the motives of the liability insurance company or of its insured. The statutes deal, or are supposed to deal, with absolute justice and impartiality toward all parties. Certainly no one

can be condemned or properly criticised for insisting upon those rights which are guaranteed to him by the law.

Perhaps it is not so remarkable after all that the United States in comparison with the European countries has been backward in recognizing the necessity for a change. As shown previously, it was not until 1884 that Germany enacted its general workmen's compensation law, although as far back as 1871 its modification of the liability laws served to remove many of the hardships which had been felt by injured workmen. Notwithstanding our vigor and our size, we are one of the youngest in the family of nations, and we may not have experienced the necessity for the changes quite as early as did the European countries. It is now quite evident, however, that as we have awakened to the necessity of a change, we are prepared to attack the subject in our characteristic hasty fashion, with the result that unless we proceed with due care and caution we shall find ourselves burdened with obnoxious requirements, which in their way may prove as unfortunate as the conditions which they aim to remedy.

The activities in some of the United States seem to have taken two distinct forms:

1. The abolition of the usual defences which have served to prevent the injured workman recovering damages from his employer in the event of accident, and

2. The inauguration of some State insurance plan whereby the workman is compensated for accidents, no matter who is responsible for their occurrence, although if the employer be enabled to prove conclusively that the injury was intentionally sustained he is relieved in such cases from his liability.

There is little to be said in favor of the first of these propositions. In attempting to deprive the employer of the usual defenses it does nothing more than to encourage litigation without making a definite provision for the betterment of the injured workman and his dependents. The history of accident litigation in this country is not a particularly pleasing one. A claim for indemnity is made, the attorney for the plaintiff bends every effort to work

upon the sympathy of the jury for the purpose of obtaining a large verdict, while the attorney for the defendant uses all of his professional skill in minimizing the effects of the injury and the liability of his client; the case goes to the jury and the size of the verdict depends upon the way in which its mind has been influenced by the arguments of counsel and by its own prejudices and beliefs. The damage caused by an accident may mean not only that a productive member of society has been rendered unproductive, but other relationships may have been seriously affected, the general public being interested, for instance, in the wife and minor children being placed in a position whereby they will not become public charges. The settlement of a claim for damages, therefore, of this kind is too sacred and important a matter to be entrusted to the whims of a juryman and his natural liability to be affected by cant and prejudice.

From the standpoint of right and justice, therefore, it is evident that we should not be content with merely holding the employer liable for accidents and then requiring the injured workman to establish his claim in court; from the standpoint of the underwriter it is, in these circumstances, manifestly impossible to fix rates with any degree of certainty.

From every viewpoint it becomes desirable, therefore, to take care of this condition by the enactment of provisions which will make the amount of compensation directly ascertainable when once the question of responsibility has been established. If the statute provide that all injuries occurring during employment, except those which were willfully incurred by the workman or sustained during intoxication, were to be compensated for according to a definite scale, we should be confronted only with the necessity of establishing the liability for the accident. If according to such a law the employer be liable, the question of the benefits to be paid would be automatically settled and the most prolific source of uncertainty and trouble would thereby disappear.

It must be apparent, therefore, that companies have nothing to lose and everything to gain by the enactment of a workmen's compensation law containing a schedule of benefits to be paid in the event of the employer being liable for the injury. As all insurance is based upon the idea of the distribution of the losses of the few among the many, and since an insurance company is merely the vehicle of distribution, it follows that if the extent and nature of a risk be known an approximately correct premium can be computed.

That the introduction of such a law ought to be welcomed by the underwriter is indicated by an analysis of some of those problems which have demanded his attention during recent years. I think I am correct in saying that the most important question with which liability companies and supervising officials have had to deal during that time is the question of adequate loss reserves. To my mind difficulty has been added to an otherwise troublesome question by the injection of the element of uncertainty in litigated cases. The tendency of juries to render verdicts for larger and larger amounts in personal injury cases has been noted, and in consequence it has been found that the cost of disposing of the litigated cases is much larger than had been originally contemplated. This situation naturally has an important bearing on the subject of liability loss reserves. With a law such as I have indicated above, this element of uncertainty would disappear and the value of every claim would be definitely known and the proper reserve could be thereby accumulated. In the calculation for determining the premium necessary to be charged, the underwriter would deal only with the *number* of accidents which would probably occur and would not be required to provide for the margin of safety now required for the flexible, variable and uncertain quantity which may be characterized as "jury recoveries."

Assuming then that the interests of the workman, the employer, the underwriter and the general public will best be served by the enactment of a law providing for a definite scale of benefits in the event of injury, how shall the con-

tributions necessary for that purpose be collected? I have pointed out the two possible methods. Let us examine them in detail.

The first method involves the necessity of the State fixing the necessary rates, attending to the collection of the assessments, investigating the conditions surrounding each claim and finally paying the benefits to the claimant. This method is required in but few of the European countries. I doubt whether the American people are ready to create the large and powerful political machine which would be rendered necessary by this method, or do I think that we are ready to designate the Government as a depository for the large contributions which would be required. Competition would be eliminated, and it requires no demonstration on my part to show the benefits of competition in cases of this kind. Private companies would be enabled to provide a more effective investigation of claims than would the State, and the only possible governmental advantage—that of expenses of administration—is a question the discussion of which I should like to defer for a few minutes.

The second method limits the State to the designation of the benefits to be paid under certain conditions, and leaves with the employer the question of distributing the benefits. It must be apparent to all that without the creation of proper safeguards, grave injustice might be worked to the claimant, the solvent and responsible employer and the public generally, for if we require no evidence of responsibility we are opening the way to serious evils. As the result of an extensive accident, the number of claims which the employer would have to meet might be so large as to endanger his financial condition; he would be unable to meet the payment to his injured workmen required by law; in consequence, therefore, they would become public charges or would be deprived of the benefits to which the law states they are entitled, and which under similar conditions their injured fellow workmen in the employ of a more prosperous employer would receive.

How then shall we so frame our statutes as to obtain the maximum good and the elimination of the evils just pointed out?

I am of the opinion that at the present time the maximum good is to be attained not by requiring the State to become the insurer, but by placing upon the statute books a law which would embody the following features:

First.—A statement of the circumstances under which the employer becomes responsible for an accident during the hours of employment.

Second.—A definite scale of benefits to be paid by the employer when he is responsible.

Third.—A requirement that every employer to whom the law applies shall file with the commission, mentioned hereafter, satisfactory evidence that his responsibility for the payment of benefits for which he becomes responsible is guaranteed by a corporation authorized to transact the business of liability insurance.

Fourth.—The appointment of a commission (some of the members of which should have a knowledge of the technical side of employers' liability insurance) which would classify the risks, and would, after the necessary investigation, fix the minimum and the maximum rate which would be charged by any corporation authorized to furnish the guarantees.

Fifth.—A provision that the commission may, after hearing evidence, order the installation of proper safety devices in order that accidents may be prevented as far as possible.

Sixth.—A provision that those employers having more than a certain number of employees may, instead of becoming insured in a private company, elect to deposit with the State the minimum premium required by the commission, which deposit is to be increased from time to time as required by the commission in order to cover the present values of benefits to be paid, and is to be withdrawn on filing with the commission satisfactory evidence that the deposit is not required for the payment of claims.

Within the limits of a brief talk such as this one is, it is impossible to deal with all the details of so important a subject, but the skeleton which I have just outlined will serve, I think, to indicate the idea which is uppermost in my mind.

Why should the State be empowered to fix the maximum and minimum rates which may be charged?

It must be admitted that the whole scheme of the proposed protection will fall to the ground unless the company when called upon to pay the claims will be in a satisfactory financial position to do so. In one or two of the countries abroad a certain sum is exacted each year from employers for the purpose of protecting the State against insolvencies. The same result could be obtained if the State were in a position to satisfy itself as to the sufficiency of the guarantors. The best and simplest way to enable it to guard against future insolvencies is to require that the company shall charge a premium commensurate with the risk. In other words, that no company shall be permitted to hazard the plan by injudicious or ignorant underwriting. Competition is a desirable thing, but it must not be carried to that point where the protection is furnished below cost and the safety of the entire structure thereby endangered.

Why should the State be permitted to regulate the *maximum* rate which may be charged? It must be evident to all of us that the expenses of administering the business have been too great—a condition not peculiar to liability insurance. In life insurance, for instance, the same conditions were found, and we have attempted to correct the evil in two different ways: In New York, for instance, the law, without attempting to fix the maximum premiums which may be charged by the companies, has limited the amount which may be used for expenses in any particular year; in Wisconsin, on the other hand, the law limits the premium which may be charged by any life company for any particular form of policy. Both New York and Wisconsin provide for the penalizing of any company which would be so unmindful of its own interests as to

charge too low a premium, and fix the minimum as the net mathematical premium required to furnish the insurance.

It will be seen, therefore, that my proposal to establish a maximum and a minimum limit for the rates to be charged is not so radical, but its counterpart may be found in other lines of insurance.

An insurance company is entitled to charge a premium which is sufficient to provide for the following elements:

(a) An amount necessary to pay for the losses.
(b) The economical administration of its business.
(c) A fair return to its stockholders whose capital has been invested as a guarantee fund.

No company should be permitted to charge less than the amount required to pay its losses, and no use of any portion of that amount for expense or dividend purposes should be tolerated.

The question of expenses is one which should not be lightly dismissed. If I were asked to place my finger upon the one expenditure which has been excessive in the history of private companies, I would unquestionably point to the item of procurement expenses. Again, we find that liability insurance is not alone in this matter, for the one item which is in need of retrenchment in all forms of insurance is the one providing for the soliciting of the business. In comparing the expenses of private companies, however, with the expenses of the governmental departments abroad, we should not be misled by statistics which purport to give the expenses of administration in those places. If we analyze them carefully I think we will find that many items which should have been charged to the expenses of the plan have been mingled with the expenses of other branches of the State Government and their identity therefore lost.

It is a question whether at the present time our political machinery is quite prepared to burden itself with this additional load. If we could be assured of the fact that the Government employees having State insurance in charge would bring to their work the same energy and

intelligence which is now required of employees in private companies, the question would be in a fair position to be solved, but at the present time I am of the opinion that we in this country are not equipped to have the State undertake the exclusive conduct of the employers' liability business. This, however, is merely a matter of development, and if the attitude of the private companies is such as to force that upon the State, I believe that the State can and will find a way to handle the proposition.

COMPENSATION FOR ACCIDENTS TO WORK-PEOPLE—SHOULD IT BE ADMINISTERED BY THE STATE?

Address of Mr. J. Scofield Rowe

Vice-President, Aetna Life Insurance Company

1. *Why and by whom is State Insurance advocated?*
2. *Insurance Companies blamed for conditions which called them into existence and for which they are in no way responsible.*
3. *Possible Constitutional Objections.*
4. *Political, social and economic dangers.*
5. *Present deplorable conditions in Germany.*
6. *English methods adaptable to this country.*

Much will have been accomplished if the numerous articles and editorials that have appeared in newspapers, journals and magazines on the subject of workmen's compensation succeed in arousing the American public to take a serious and intelligent interest in a question which affects the community at large and especially business interests as vitally as any question that confronts the people of this country at the present time.

The earnest attention now being given in most of the States to the question of how best to deal with industrial accidents has given rise to much discussion regarding the best method of administering workmen's compensation insurance.

There are some who contend that the business of insurance in this respect should be undertaken by the State, and as this phase of the question is apt to develop in every State where a workmen's compensation plan is suggested it is well to consider whether a law providing for State insurance would be free from constitutional objections and conserve the best interests of employers, employees and society as a whole.

First, let us consider:

Why and by Whom Is State Insurance Advocated?

The true socialist favors it on general principle, and is always on the alert to advance his pet theories of paternalism in government and community of interest.

He professes to believe in the extension of the prerogatives of the government even at the expense of individual enterprise, and hopes thereby to retard the growth of individualism and secure a more equitable distribution of the benefits to be derived from the country's wealth and resources.

The politician clamors for it ostensibly in the interests of either capital or labor, whichever master he happens to be serving at the time, but really for the sole purpose of strengthening the hold of a powerful political machine on the business interests of the country for personal gain and the additional political power that is expected to be derived from such an organization.

The misguided reformer urges it because his attention has been called to the great economic waste resulting from present unsatisfactory conditions; and having heard that only about 30 or 35 per cent. of the amount paid for liability insurance actually reaches the injured he jumps at the conclusion that insurance companies are a lot of cold-blooded robbers, who are deliberately appropriating to their own use many millions a year that properly belong to the injured workmen and to the country's widows and orphans; hence State insurance coupled, if possible, with compulsory compensation *is the only remedy.*

So far there has actually been no real call for State insurance of industrial accidents on the part of either employers or employees, the employer's principal complaint being that he should not alone be called upon to bear the entire cost of accidents to his employees, while employees are insistent in their demand that compensation should be paid for all accidents regardless of fault.

Insurance Companies Blamed for Conditions for Which They Are in No Way Responsible.

Now liability insurance companies were called into existence because of these conditions and are in no way responsible therefor.

Socialists, politicians and alleged reformers, all candidates for notoriety, and some for graft, have no compunction in misleading and deceiving the public; if so by their purpose is accomplished.

We have a striking example of this in the recent compulsory compensation and State political insurance scheme effective in the State of Washington.

I shall not call it a law because *scheme* is more appropriate, and to become a law it ought to be *lawful,* which I firmly believe this *scheme* is not.

We have had conclusive evidence that had it not been for the fact that the public generally, and the Legislature in the State of Washington more particularly, were deliberately deceived and misled into believing that the Casualty Insurance Companies were directly responsible for the unsatisfactory conditions existing in connection with the proper indemnifying of employees for industrial accidents, the Washington State political scheme would never have been passed.

The real facts are that Liability Insurance Companies are merely the result and not the cause of existing unsatisfactory conditions.

In other words, Liability Insurance Companies were brought into existence by reason of the crystallization of public opinion in support of claim making, which obviously developed the need on the part of employers for insurance protection against law suits and the uncertain damages resulting therefrom.

Up to the present time Casualty Insurance Companies have never been afforded an opportunity in this country to insure employers against the loss resulting from industrial accidents under a workmen's compensation law designed to require the payment of indemnities for all accidents regardless of fault, and it will be obvious to the experienced liability underwriter that the administration of insurance against loss resulting from industrial accidents under conditions imposing such loss upon employers without regard to negligence could be handled and administered by private companies far more satisfactorily and with much less expense than it could possibly be administered by any State Insurance Department,

interwoven and controlled as it is sure to be by whichever political party may be in power.

Everyone who has given the subject any thought realizes that so-called employers' liability does not offer the ideal way of dealing with the consequences of industrial accidents, and that a system of compensation for such accidents, which will in a measure fix their cost and make it as much a part of the cost of the product as is the damage or destruction of material or the wear and tear upon machinery, would be far preferable.

There is no question that from a social and economic standpoint the workman or his family should receive reasonable compensation for injuries which result in his disability or death, otherwise the burden is apt to be shifted ultimately from the cost of the product, where it belongs, to the community in the most undesirable form of charity.

There is no question that should such compensation be required by law employers would be seriously embarrassed if left to bear the burden alone.

The loss must, therefore, be equalized and the burden distributed by some method of insurance which would enable the stronger and weaker employers to offer the same adequate guarantee that each accident shall be properly compensated without the burden falling too heavily upon any one employer or industry or part thereof.

Possible Constitutional Objections.

There is apparently no constitutional objection that could prevent a State government from establishing a Department of Insurance for the actual collection of premiums and distribution of losses so long as the question of patronage of such a department is left optional with its citizens, but no one who has given the subject any thought would expect such a department to succeed in competition with experienced private insurance organizations.

Any attempt, however, at compelling a certain class of citizens to insure with a State Insurance Department against any of the chance hazards or risks of the business in which one happens to be engaged, such as is now being attempted

in the State of Washington, is, we believe, a direct violation of the Federal Constitution, Amendment 14, Section 1, namely:

> "Nor shall any State deprive any person of life, liberty or property, without due process of law."

The employer who prefers to manage his own business and to insure or not to insure the chance financial risks of his own private business operations, whatever they may be, is most certainly deprived of both liberty and property when he is compelled to contribute to a State fund from which is paid the chance losses from the private business operations of others and in which he has no direct personal interest.

The Constitution of the United States, and many if not all of the States, provide that *the right of trial by jury shall be inviolate.* How then can a law stand that denies this right to any person, employee or otherwise, who may be seriously injured through the negligence of another, even though it offer as a substitute a sum fixed by law as compensation, and which may or may not be adequate for the damage sustained?

Is it proper or in the interests of justice that any set of lawmakers should undertake in advance of the accident causing the injury or loss of life to place a fixed price upon the lives and limbs of its citizens *and at the same time deny them all other rights?*

We contend that if more laws are needed in this country to correct existing evils they should seek to make it easy for one and all to obtain justice with all possible economy and despatch, and not to make justice more than ever inaccessible by a glaring infringement upon the personal rights and liberties of its citizens.

While the Compulsory State Insurance Law of Washington has recently been upheld by the State Supreme Court this decision was obviously obtained through a friendly suit and without there being any actual parties at interest, and Judge J. Chadwick, while concurring with the present decision, adds the following comment:

> "This proceeding is prosecuted by the relator, a simple contract creditor of the State. There is no party

in interest before us whose interest is to challenge the Act of the Legislature. This is a moot case pure and simple, and the right of the relator to recover is in no way affected by the constitutional questions raised by the parties and discussed by the Court.

"No one will contend that it is of any concern to a furniture dealer who is seeking to collect his account whether an injured workman is to be deprived of the right to submit his cause to a jury of his peers.

"The principle is too important to be mooted by the Court, for some day a real party of interest will be before us. Either an employer who feels aggrieved by the operation of the law or a workman who has received injuries which the accepted schedules will not compensate, and we will be put to the duty of deciding the case without reference to our present decision so that the Federal questions involved may pass for final hearing to the Supreme Court of the United States."

Robert H. Montgomery, of the Harvard Law School, in commenting upon the constitutionality of the new Ohio Compensation and State Insurance Law (Ohio Law Reporter, October 9th), quotes from many important legal decisions, among which the following may shed some light on the subject:

"The sovereign power of the State is vested in three departments—legislative, executive and judicial. Whatever power is vested in either the executive or the judicial departments cannot be exercised by the Legislature."

"The judicial power of the State cannot be encroached upon by the legislative department. It may furnish remedies, but the courts alone can enforce them."

"The power conferred upon the General Assembly is legislative power, and that body is expressly prohibited from exercising any judicial power which is not expressly conferred by the Constitution."

"Judicial power is not exercised in the constitutional sense by a referee in determining facts in a cause submitted to him, but by the Court in giving judgments."

"An Act of the Legislature authorizing contributions to be levied for a mere private purpose would not be a law, but a judicial sentence and not within the legitimate scope of legislative authority."

"The Legislature has no power to substitute boards of arbitration for the Courts without the consent of the parties."

"The Legislature has no power to establish rules which under the pretense of regulating the presentation of evidence so far as altogether to preclude a party from exhibiting his rights."

"A law which directly accomplishes a like result by imposing such conditions upon the right to appeal for judicial relief as works an abandonment of the right rather than face the conditions upon which it is offered or may be obtained is also unconstitutional."

"In our system of government the power to establish police regulations has been left with the State governments and may be exercised by the Legislatures according to their judgment and discretion in any manner not inconsistent with or repugnant to the Federal or respective State constitutions."

"While therefore a broad discretion is given to the Legislature to provide for the general welfare, it necessarily is not any arbitrary or unlimited discretion, for if it were beyond judicial control or review it would amount to a practical abrogation of all constitutional guarantees of personal rights."

Political and Social Economic Dangers.

The prerogatives of our form of Federal and State government are primarily to govern, and these prerogatives involve:

1. The passage of such laws as may seem wise and necessary to properly govern its people and insure equal opportunity, protection and a square deal to all of its citizens.
2. The establishment, maintenance and operation of such executive and judicial departments by the State as are necessary to the administration and enforcement of its laws.

No one but the socialist, therefore, will deny that it is unwise, improper and entirely contrary to the best interests of the State or its people under our form of government for the State to directly enter into any business which interferes with or in any way curtails legitimate individual enterprise, and which is wholly unnecessary in the administration of

proper laws for the government of a free and liberty-loving people.

In other words, it is the province of the government to govern and not to meddle with the private affairs of its citizens, nor to enter into any legitimate field of private enterprise, whether it be insurance or something else.

It would certainly be difficult for any State to establish a department to administer so-called workmen's compensation with its stamp of paternalism without venturing into fields which, it is doubtful, if this republic is ready to enter, and which involve a complete abandonment of individualism for socialism.

Why not suggest that the State form a fund to protect property in case of fire or to protect a business against calamity involved in the death of its head, or entering the coal mines to bring forth the fuel to warm the people, or engaging in the manufacturing of their clothing or raising crops to feed them?

History furnishes proofs in abundance of the deleterious effect upon a people's virility and prosperity inevitably following upon paternal government.

But entirely aside from the propriety and advisability of the State entering the insurance business, can it transact such business as well as the private companies now engaged in it which have made deep study of its varied and intricate problems; which have built up thoroughly equipped and skilled organizations for handling it in its many complicated phases, and which can view each new problem in the light of long, wide, and varied experience?

The chief functions of an insurance business dealing with industrial accidents are to prevent as many accidents as possible and to give fair compensation for such as cannot be prevented, and this latter properly involves the resistance of unjust claims.

Some reformers appear to have overlooked the fact that more unjust claims are sure to develop under a compensation law than have to be contended with under present conditions, as, obviously, every injury, however slight, will be made the basis of a claim and the malingering of injured workmen

who will endeavor to defer the cessation of indemnity as long as possible is sure to prove a difficult problem.

It is a recognized fact that a considerable portion of the general body of labor is normally in a state of chronic dissatisfaction with its lot as regards both the work and the pay. This is especially true of unskilled labor, whose quantity and quality combine to procure for it a relatively small wage, and whose work being necessarily physical alone is more apt to involve hard labor.

Wages, like everything else, are governed by the laws of supply and demand, but this does not always appeal to the workmen of the class mentioned, who may not be fitted for any higher and less arduous grade of work, and there may be many others eager to take his place for the same pay. This thought does not occur to him, however, and it is perhaps natural that he should be inclined to seize upon every opportunity to make a claim on account of an injury and to enjoy indemnity therefor as long as possible.

In this country it has been the experience of Liability Insurance Companies that of all accidents reported to them only about 16 per cent. of the injured had a just claim upon the employer through his negligence.

If a large proportion of unjust claims have been brought when claimants knew they must prove the employer's negligence to get damages, is it not certain that a much larger percentage will develop when negligence does not have to be proved; when it is necessary merely to offer sufficiently convincing proof of receipt of injury.

Whether natural or not this has been the experience in countries where compensation systems of insurance are in existence.

Even in Germany, where the first thirteen weeks of indemnity for accidents is paid out of the funds of the sick associations, which are run by the workmen themselves, simulation and malingering play a large part in procuring indemnity and in prolonging the period during which indemnity is paid.

If workmen will attempt thus to get the better of their fellow workmen it is certain that a State administration of in-

surance funds would have a much worse experience with the same evil.

There is another obstacle in the way of the creation of such State organizations, however, which is likely to prove insuperable—*and that is politics.*

The one great menace to the success of all insurance against industrial accidents is the danger of enormous sums being disbursed not for actual loss, but for successful imposition. To avoid this, claims must always be investigated in an unbiased manner. Sometimes in a way that may seem hard-hearted.

Will a State insurance institution investigate in this way, and can it resist the political pressure upon it to be lax?

Will the investigators put aside all thought of political expediency and will they do their work as it should be done, regardless of the political fate of their chiefs and of themselves?

We do not believe it possible in this country for a State insurance administration to be divorced from politics, and it is hardly necessary to refer to the generally well known fact that the State cannot conduct any business as economically as private enterprise.

The State's disadvantage in handling claims for political reasons, as well as lack of experience, will tend towards higher rates, while pressure brought to bear by both employer and employee will work towards rates insufficient to take care of a constantly increasing volume of claim payments, each year adding its modicum to those brought forward from previous years.

If rates are excessive the industries of the State will be placed at a disadvantage in competing with those of other States. If they are inadequate; if sufficient reserves are not set aside each year to care for future payments of indemnity under claims already established the burden which should properly be borne by present employers will fall too heavily—perhaps with crushing effect—upon future ones, otherwise the State must step into the breach, making up the deficiency and collecting the necessary funds through the medium of increased general taxation.

Suppose such a State insurance law provides (as I believe the new law in Ohio does) that the expense of the complete administration of the insurance scheme shall be paid out of the general funds of the State, will the general *taxpayers of the State consent to pay for the cost of such an organization?*

In our humble opinion it would be obviously unfair to require the people of a State through increased general taxation to pay this considerable part of the cost of private industrial accidents instead of its being distributed as a part of the cost of the product among the entire body of the consumers of the product, whether in Maine or Florida, in Europe or Asia.

Would a tax for such a purpose be any more fair than one imposed to carry an employer's fire insurance policy for him, or to help him meet the increased cost of raw material?

Deplorable Conditions in Germany.

Advocates of State administration of proposed workmen's compensation insurance back up their arguments by reference to the semi-State insurance system operating in Germany, notwithstanding the fact that the difference in form of government and political conditions makes the copying of the German system in this country impossible.

Admitting, however, for the sake of argument that the German system could be faithfully operated here, *how many Americans would desire to see the resultant conditions reproduced in this country?*

It is a well known fact that in Germany the result of their national compensation plan has been to tremenduously increase the number of accidents reported and to greatly encourage malingering, if not to have actually pauperized the working people.

In a long essay on the subject by an eminent German writer, Dr. Ferdinand Friedensburg, who has been associated with the Imperial Insurance Office for more than twenty years, a most deplorable condition is brought to light, and which clearly indicates that German industrial life *is wallowing in the mire of unrest* and *contentious litigation;* and, furthermore,

that political pandering to the masses has resulted in an enlarged and *almost grotesque* bump of benevolence which completely dominates and overshadows all sense of justice and right.

Dr. Friedensburg calls attention to the fact that one of the effects that was expected from workmen's insurance was the reconciliation of the social contrasts. What was achieved in this respect he deplores as only an utter failure.

He also says there is something tragic in a recent report of the State Secretary of the Interior, February 18, 1910, in which the Secretary courageously and frankly declares:

> "We have not succeeded in bridging the deep abyss torn by the economic struggle of the last decade."
>
> "Obviously the trouble lies, viewed from the right angle, with the mixing of insurance with politics. *Workmen's insurance can only exert its effect as a blessing,* if free from all exaggeration, and particularly from the conscious or unconscious love-making with the lower classes, *it works as an independent institution, free from all partiality,* as all others."

English Methods Adaptable to This Country.

Other advocates of State administration of workmen's compensation in the United States point to the workmen's compensation acts of Great Britain, and, in consideration of the fact that the common law system of the United States was, as before stated, introduced from that country, the comparison is for this and other reasons more apropos. It need only be said that, while in England successive compensation laws have been passed, making it compulsory upon employers to pay compensation to all injured employees, no steps have ever been taken by the British Government to enforce State insurance, recognizing, as they have done, that the liability insurance companies, with their experience and organization, were in much better position than could be any government commission to administer the compensation prescribed by the English acts.

That the British Government has been wise in its day and generation, in leaving the administration of workmen's compensation to be carried out by the Liability Insur-

ance Companies, is shown very clearly by the following clipped from a recent issue of the London *Daily News:*

> "The employers of the United Kingdom are probably imperfectly aware of the somewhat remarkable fact that the protection obtained by them over a long series of years has, taken as a whole, been retained at rather less than cost price.
>
> "That a number of large public companies should transact a great volume of business year after year at a loss, and be still doing so, is unique in the annals of insurance, and, it may be thought, of other businesses also.
>
> "Accident insurance was not unremunerative until workmen's compensation business came into vogue, but the difficulties connected with it have been so great as to put strong offices out of business, and to bring to naught the labor of many years in upbuilding an extensive office organization. Estimates of the rates necessary for risks have time after time proved to be insufficient. When the Act of 1906 was passed it was believed that in the case of miners a rate of 1 per cent. on the wages would suffice as a premium for insuring the employer's liability. It has been shown by experience that five times that amount is necessary. In other industries from ten to twenty times the original rates are now required, and the end is not yet."

This should be sufficient to disabuse the mind of anyone imbued with the idea that large profits are easily made out of employers' liability or workmen's compensation insurance, and it would be well for the State to leave the scientific handling of experimental schemes of workmen's compensation in the hands of the liability insurance companies, whose experience gives them at least some statistical data upon which to base their future operations.

In conclusion, we repeat that there can be no justification for interference with the operations of insurance companies or the acquirement of their business by the States, unless, and until, the people of this country are ready for State socialism, and for the States to directly take up the transaction of any and all classes of business.

In this connection, and for the benefit of those who advocate the copying of systems in foreign countries that are not

adaptable in this country, we cannot do better than quote from a recent speech of President Taft, who said:

> "I have seen arguments based upon the attitude of foreign governments toward great enterprises in which it is pointed out that they have encouraged, fondled and protected combinations of this character. That is true. There is a tendency among some foreign governments to encourage what they call trusts, to take part themselves in the management of the trusts, to fix prices and to depend upon governmental control to secure their reasonable conduct; but such a system with us is absolutely impossible, and it might as well be understood. The countries to which reference is made are veering toward State socialism. This, indeed, if competition is to disappear, is the logical escape from the evil of private monopolies, because if private companies are not to be allowed to manage everything and fix prices then there is every reason why the control thus exercised by them should be transferred from them to the Government, and this is State socialism."

Consideration of the results under workmen's compensation laws of the British companies, as shown, might perhaps give pause to the utterances of State Governors and others who have not been content with criticising, without cause, the increase in insurance rates that the liability companies have found it necessary to apply in States where compensation laws have been enacted, but have issued threats of their purpose to advocate State insurance if the liability insurance companies persist in charging such rates.

It need only be said that, the Liability Insurance Companies, with much more knowledge that these critics of what is adequate and necessary to administer workmen's compensation benefits, will not be diverted from safe and sane underwriting methods by any cheap political talk on the part of those who are apparently more concerned in their chase for notoriety than they are in establishing a reputation for truth and common sense.

STATE EMPLOYERS' LIABILITY INSURANCE
(or Workmen's Compensation)
Address of Mr. Edson S. Lott

President, United States Casualty Company, New York

Governor Woodrow Wilson has the reputation of being an intelligent student of the progress of civilization and of the laws controlling human intercourse. As such, his opinions command serious consideration.

A labor law which the Governor recommended met with opposition from some employers of his State, the opposition being based, in part, on the increased cost of insurance covering employers under that law. The Governor meets such opposition by saying that those who make the insurance rates are "singularly unwise." He goes further and makes a declaration which sounds almost like a threat. He says it *may* be necessary for New Jersey to provide a system of State insurance.

When the Legislature of New Jersey adopted and Governor Wilson approved the new law, it may be assumed *he expected that under it, more injured workmen would receive compensation from their employers than theretofore.* If this is not so, of what use is the statute? If these new laws—Governor Wilson's laws and others like them—do not put more cash into the pockets of the injured workmen and their dependents, then they do not accomplish what their sponsors claim for them—then the laboring men have been fooled—fooled by their friends. If they do put more money into the pockets of injured workmen, they must take more money out of the pockets of the employers. The employers, quite naturally, pass the increased burden on to the liability insurance companies.

How did Governor Wilson presume the increased cost would be met? Did he expect insurance companies to maintain the old rates, without regard to the difference in loss ratio? Of course he did not. He knew that an increase in rates was

inevitable, with the taking effect of the new statute, because of the increased liability the statute imposed. What, then, is the basis of the Governor's declaration that the increase is so great as to be evidence of a lack of wisdom?

Governor Wilson cannot have greater knowledge than insurance underwriters themselves as respects what it is likely to cost insurance companies to insure New Jersey employers against their liability for accidents to their workmen. He has no source of information on this subject which is not readily accessible to every underwriter in the land. He surely has not studied—has not even seen—the figures of the companies whose managers he characterizes as "singularly unwise." It appears, therefore, that in this particular instance Governor Wilson, contrary to his custom, reached a conclusion on *ex-parte* evidence.

Quite frequently and from many sources we hear expressions, concerning liability insurance, which may well be thrown aside as unripe thoughts arising from a superficial political study of a complex commercial question. But it must be admitted that there is a difference of opinion even among experienced liability insurance underwriters concerning what is a proper premium rate for employers' liability insurance in those States, including New Jersey, where now practically all accidental bodily injuries to workmen result in liability on the part of their employers. This difference of opinion is shown in the varying rates on the same risk quoted by different insurance companies.

In the early days of employers' liability insurance in this country, claims for damages by workmen against employers were made far less frequently than at present. Formerly the laws of the various States did not hold employers to so strict accountability as they do at the present time. Premium rates for employers' liability insurance in many States, including New Jersey, have been radically advanced of late because employers' liability laws have been radically changed. The lawmakers of many States, including New Jersey, have recently removed many of the legal defenses which the employer formerly had. A far greater percentage of injured workmen

can now obtain damages (or compensation) from their employers than was possible under the old laws.

Insurance companies had nothing to do with the enactment of these laws. Their duty consists in conforming to the laws after they are enacted.

In making calculations to fit these new conditions, liability insurance underwriters have used the data at their command and the knowledge founded on their experience in an endeavor to name premium rates which will prove fair to the insurer and the insured. They are forced to realize that competition will not long, if at all, permit them to charge rates which are too high, and that rates which are too low will put their companies in the hands of receivers.

The laws require stock liability insurance companies to maintain deposits and many kinds of reserves. Each company is required to maintain a statutory deposit in its own State, for the protection of policyholders everywhere, which deposit must be kept intact for the benefit of policyholders should the State at any time stop the company from doing business. This deposit is usually a quarter of a million dollars. Such companies also must always have on hand a reserve equal to their premiums in force, so that should the State appoint a receiver, he may reinsure all risks without loss to the policyholders. In addition, companies must always have on hand a reserve equal to all their indebtedness, due or to become due. Moreover, in addition to all the above, companies must maintain reserves for claims and suits based on each notice of an accident received. This reserve, called the claim reserve, is a difficult one to compute properly, for the reason that it is extremely uncertain what amount a company may finally be called upon to pay in consequence of each accident reported.

At first each company "estimated" the probable final amount each accident would cost, and set aside a claim reserve accordingly. But experience showed that no company estimated enough. It was found that the final cost was far more than the amounts estimated, and that premium rates made on such estimates were too low. The estimates on final claim costs were increased from time to time and premium rates were advanced. State insurance departments also began to realize

that company estimates of claim costs were too low, and made rules of their own to compel companies writing liability insurance to set aside more adequate claim reserves. But still, as experience matured, it was found that the actual cost of settling claims kept ahead of the reserves provided.

Then various States enacted laws compelling liability insurance companies to compute reserves for claims in certain ways. The laws differed in detail, and they brought about different results, but all of them were enacted with one object in view—saving the companies from insolvency, or, more properly, saving insurers from patronizing companies which might become insolvent and leave them without protection. The companies increased their reserves and their rates, and yet neither proved high enough. Last year a joint committee of State insurance officials and liability insurance underwriters prepared a draft for an entirely new law concerning claim reserves, and the States of New York, Connecticut, Georgia, Massachusetts, Ohio, Minnesota and Washington adopted this law. Now it will be necessary for companies to reserve a greater amount than ever before for claims.

It is common knowledge among State insurance officials that liability insurance premiums must be advanced if the companies writing this line of insurance are to remain solvent. When, in addition, a State very greatly increases the liability of employers for accidents to workmen, then the insurance company manager who does not very greatly increase his premium rates, is unworthy of his position, no matter how many Governors may call him "singularly unwise."

And the case is not altered even though Justice herself cries aloud for these laws.

If, under the old and less drastic laws, State insurance officials found that many companies would be obliged to assess their stockholders for more money to maintain a sufficient reserve for claims, because their premiums were insufficient, why is it not imperative for the companies greatly to advance their rates under these new and more drastic laws?

The losses in connection with liability insurance are deceptive, for they mature more slowly than in any other line of

insurance. In life insurance the liability of the insurance company is fixed when the insured dies. The liability of the fire insurance company is known as soon as the fire occurs and the value of the property burned or damaged is ascertained. In glass insurance the breakage of the glass immediately establishes the loss to the insurance company. It is far different in employers' liability insurance, where practically all losses are (from their nature) deferred and indefinite. Sometimes the loss is not ascertainable until ten, fifteen or twenty years after the accident occurs.

Sometimes a workman sustains an accidental bodily injury which appears to be trifling and without inconvenience he keeps right on at work for the same employer for years, and then is discharged, and *then* the injury becomes serious and *then* (if the statute of limitations will permit) a suit for damages is brought against the employer. Sometimes an injury does not really amount to anything worth while until the right lawyer gets in touch with the injured person, and then it has a commercial value—and a suit for damages against the employer follows. A minor is sometimes injured and no one who is authorized to bring suit considers that the injury lessens in the slightest degree the earning power of the one injured, but when the minor becomes of legal age, he thinks differently, and sues his old employer for damages. Delayed claims and suits of workmen for damages arising from bodily injuries are a source of great cost to every liability insurance company. The insurance company must keep "in touch" with every accident reported until it is settled or outlawed.

To further prove the need of experienced and intelligent underwriters (State or otherwise) in fixing in advance adequate premiums for employers' liability insurance, the following case is cited:

> Gerard B. Allen & Co. were proprietors of a machine shop in St. Louis. In 1872 Patrick Dowling, a boy, was in the employ of the firm. One day, while Dowling was passing from one part to another of the machine shop, his trousers became caught in a revolving set-screw and his leg was drawn into the shafting, causing injuries which resulted in the loss of his leg.

Three years later (1875) Dowling brought a suit against his employers, Allen & Co., for damages. At the first trial the court non-suited Dowling.

Dowling's lawyers appealed to the St. Louis Court of Appeals, where the case was ordered to be tried again (6 Mo. App., 195). From this decision Allen & Co. appealed to the Supreme Court of Missouri, but the decision of the St. Louis Court of Appeals was affirmed and the case was ordered to be retried in the Circuit Court of St. Louis (74 Mo., 13).

The case was, therefore, retried in 1882, ten years having passed since the accident happened.

At the second trial Dowling recovered a verdict for $10,000, from which an appeal was taken by Allen & Co. to the Supreme Court of Missouri, which ordered another trial (88 Mo., 293).

The third trial took place in 1886. At this trial Dowling recovered a verdict for $12,000. Again Allen & Co. appealed. The legal arguments continued until 1890, eighteen years after the accident. This time Dowling was successful in the Appellate Court, and the judgment for $12,000 and costs, which were very heavy, was affirmed (102 Mo., 213).

The final decision of the Court was promulgated in 1890, nearly nineteen years after the accident, and Allen & Co. were obliged to pay a judgment of $12,000, with interest at six per cent. from 1886, amounting to nearly $3,000, together with all costs of the three trials in the Circuit Court and the three appeals in the various Appellate Courts, in addition to the fees of their lawyers, of whom two sets had been employed.

Dowling was thirty-six years old, married and the father of three children, when he finally received "damages" for the injury, and it is safe to say that Allen & Co. spent fully $5,000 for court costs, printing briefs, transcripts of the testimony, lawyers' fees and other legal expenses, so that their experience with Dowling could not have cost them much, if anything, less than $20,000.

The testimony regarding the boy's experience, his knowledge of the danger of getting near the set-screw, and the foreman's instructions to Dowling, were conflicting, and the witnesses for Allen & Co., including the foreman and many others, flatly denied the boy's story, but the jury nevertheless chose to believe him, and the result was as above set forth.

Similar instances are not infrequent. It requires no laborious search through the reports of the appellate courts to find them.

Allen & Co. did not carry liability insurance, but the illustration still holds good, except that perhaps an insurance company would have terminated the litigation earlier—or settled with Dowling without litigation. When an employer is in direct litigation with his workman, he is often governed by strong prejudice and passion; that is, he feels keenly a personal injustice. Insurance companies deal with such things impersonally, calmly and dispassionately.

Such cases may fairly be cited as showing that there is need for changing our employers' liability laws to the end that swifter justice may be given to injured workmen; but they also clearly demonstrate the need of much experience and great technical knowledge in fixing in advance adequate premium rates for employers' liability insurance, and the difficulty is certainly not decreased by the enactment of workmen's compensation laws. If Governor Wilson were backing any insurance scheme with his own money, it is altogether probable that he would call in some expert help when he came to naming premiums for risks which might continue as a liability for twenty years—or longer.

Cases such as this also prove that the State cannot go into the business of liability insurance tentatively, that if the State once takes hold of that business it will be practically impossible to let go. The State cannot "try it on to see how it will go." If it puts it on, it cannot easily take it off.

To illustrate still further the deceptive character of liability insurance to the inexperienced or uninformed, and as additional evidence that insurance losses of this character mature slowly, a leaf is taken from the experience of the United States Casualty Company:

> During 1901 the United States Casualty Company insured a certain number of policyholders against their liability for damages arising from accidents. The policies ran for one year. The total premiums represented a certain amount. The company paid out for claims under those policies during that same year (1901) 11.07 per cent.

> of the total premiums received. That is, at the end of the year the company had on hand 88.93 per cent. (less expenses of administration) of the total premiums received.

This, considering only the losses paid the first year, would probably have looked like a highly profitable business to Governor Wilson. But wait!

> During the next year (1902) the company paid out an additional 25.97 per cent. of those 1901 premiums under those 1901 policies, for claims arising from accidents happening while those same policies were in force. During the next year (1903) the company paid out an additional 12.67 per cent. of those 1901 premiums under those 1901 policies, for claims arising from accidents happening while those same policies were in force. During 1904, 7.96 per cent. was added to the loss ratio in the same way. During 1905, 2.56 per cent. was added to the loss ratio in the same way. All this converted a loss ratio of 11.07 per cent. at the end of the first year (100 per cent. received in premiums and 11.07 per cent. paid in losses) into a 60.23 per cent. loss ratio at the end of the fifth year (100 per cent. received in premiums and 60.23 per cent. paid in losses) and the United States Casualty Company is still paying claims under those 1901 policies.

There is nothing unusual about the above illustration. One of the smaller casualty insurance companies had a loss ratio at the end of 1899 of 11.32 per cent. on its 1899 premiums for liability insurance; its loss ratio on those 1899 premiums had climbed to 77.34 per cent. at the end of the fifth year, and it is still paying losses on those same premiums. Its 1900 premiums began with a loss ratio of 13.50 per cent. the first year, reached 73.08 at the end of the fifth year, and not all the claims against those 1900 premiums have yet been settled.

A large foreign casualty insurance company (doing business in this country) began the year 1901 with a loss ratio of 7.38 per cent. on that year's premiums, had paid out for losses at the end of the fifth year 70.03 per cent. of its 1901 premium income, and is still paying losses on that year's premiums.

One of the oldest and largest American casualty insurance companies paid out for claims during 1901, on account of the

liability policies it issued that year, 6.83 per cent. of its total premiums for those policies. It kept on paying claims under those same policies until at the end of the fifth year it had paid out for claims 61.02 per cent. and it is still paying claims arising under those same policies.

Here is one company's record at the end of such five-year period for five such periods.

1897—1902	64.72%
1898—1903	55.77%
1899—1904	82.33%
1900—1905	50.51%
1901—1906	59.60%

Of course, liability insurance companies strive to their utmost to settle claims as soon as possible, for such a course is not only the most satisfactory to the insured but it is the most economical for the insurance company. However, in a great many cases, claims of this character simply cannot be settled as soon as the accidents occur. The delays are inseparable from the character of the claims. Presumably the State would lag far behind private enterprise in the matter of disposing of claims, inasmuch as competition, if nothing else, has caused each insurance company so to perfect its claim department (with its army of co-workers) that the claim service rendered shall be in the very highest degree satisfactory to its assured. No such service can be wholly satisfactory to the assured unless the claimants (injured workmen) are dealt with in a broad and liberal manner as distinguished from a narrow and technical spirit.

I do not know whether Governor Wilson has considered all these matters or not.

Suppose the State of New Jersey does go into the business of liability insurance. Who will run the State company (or department)? Will all stock companies be driven out and the State be given a monopoly? Or will the State merely become a competitor of the stock companies? In either event, who will fix the premium rates to be charged by the State, and what will be the basis of calculation? How will the State department or bureau determine the amount to be paid to each

particular injured employee? Who will have the last say? Will State adjusters have power to "compromise" claims, or must each go through the courts, to eliminate frauds? Is there any method (whether under a workmen's compensation law or otherwise) whereby a definite sum can be fixed for every conceivable injury? If all the premiums received by the State are not sufficient to pay all the losses, who will pay the difference? The taxpayers at large, irrespective of whether or not any particular taxpayer is insured? Would this be just to the taxpayers? If all the premiums received by the State are not sufficient to pay all the losses, will the employers who are insured be assessed from time to time for more premiums? If so, what about the employer who pays an initial premium and then goes out of business, becomes insolvent or dies,—who makes up for him?

The labor bureaus of various States now attempt to collate and classify reports of accidents to workmen. So great an authority as the Hon. Charles P. Neill, Commissioner of Labor of the United States, says that it is a crime to use the data thus obtained by many States—it is so misleading. Would the reckoning as respects the prospective cost of liability insurance, when promulgated by the State, be likely to be more accurate than the figures emanating from the labor bureau of the State?

What advantage has the State over a private corporation as respects management expenses, unless it be in the saving of agents' commissions? Conceding that the State can do away with agents' commissions, will it not cost just as much to send competent men to employers to arrange for the insurance?

There are numerous classifications for employers' liability insurance, each taking its own rate according to its hazard. There are many kinds of policies, according to the needs of the insured. The agent who solicits the business must understand the hazard to be covered and the needs of the insured, that he may have issued for him the certain policy or policies that will give him the protection for which he pays. The underwriter at the home office of the insuring company personally inspects each application of the insured and each policy issued, to see that they are in order. For com-

plicated risks much correspondence usually ensues before the policy is in correct form.

The stock company underwriter has authority to adjust everything to fit the needs of each insured. How would the State arrange this?

And who will audit for the State the payrolls of the assured? And who will settle disputes over the correctness of the audits?

When the State has fixed its premium rates, how will it know whether they are adequate until *all* the claims for accidents happening while the insurance was in force have been settled or outlawed?

And will the actuaries, underwriters, claim adjusters and clerical force all change every time the State changes its politics? Will a big employer of labor, with a big political following, be permitted to name one of the underwriters, and will such underwriter feel under obligation to name a low rate to such employer?

Will the State be able to get as competent managers and employees as the insurance companies?

Aside from agents' commissions, is it reasonable to suppose that the State can conduct the business as economically and as efficiently as insurance companies? And will salaried State negotiators cost less per dollar of premium than company commission agents?

When an employer insures against accidents to his employees, he usually also insures against accidents to other persons—the public. The owner of an establishment may be liable for damages to any person, *whether an employee or not,* who sustains a bodily injury on or about his premises. The prudent owner takes out public liability insurance as well as employers' liability insurance. Both hazards are often covered in one policy. The two hazards are closely interwoven. Will the average insured split his insurance, giving one piece to the State and the other piece to a stock company?

It is, of course, very doubtful whether Governor Wilson will finally actually advise his State to go into the business of insurance. He certainly will not advise his State to insure steam-boiler, elevator, teams, vessel, theatre, landlord, auto-

mobile and kindred lines. Such insurance protects the insured against his liability for accidents to his employees and *also* against his liability for accidents *to the general public.* It is not conceivable that the State will, for a consideration, hold one citizen harmless from his liability to another citizen, when such liability arises from a law created for the protection of both citizens.

Many contractors carry on operations in two or more States. Many manufacturers send their products all over the country and send their own men along to install them. If such contractors and manufacturers were insured by the State, of what value would the insurance be when the insured were operating outside of the State?

If the State company were given a monopoly of the business in its State, would it insure the concern of another State while carrying on operations in its State?

The proper kind of self-interest will be entirely absent from officials who are selected to manage the State company, while always present with the stock company officials. Self-interest is a tremendous motive to keep up the service to the insured and to keep down the expenses of management. State company officials will be selected by politicians and will themselves be politicians. They can hardly be expected not to embrace the opportunity to become personally popular through liberal expenditures. They will have no personal interest in preventing payments to excessive and fraudulent claimants.

Stock company officials are selected, retained and promoted on their merits.

Moreover, I make the bold statement that no State can obtain the services of the army of competent men required to conduct successfully a large liability insurance company. Those having the necessary technical and practical knowledge would not accept a State position—they would leave such insecure positions for the politicians and their followers.

Insurance companies are already supervised to such an extent that they may almost be said to be part of the State. What other business is there which is subjected to such great publicity as is that of insurance? Every dollar of income is reported to the public authorities of nearly half a hundred

States, if the company is doing business in all of them. These reports are spread broadcast. Expenses are subjected to the same scrutiny. Every detail of management is supervised by public authorities. Even the right to contract is limited by law and supervised by insurance commissioners.

No less a person than Arthur I. Vorys, for many years State Superintendent of Insurance of Ohio, has said:

> "There is no institution in the United States subjected to as much inspection, supervision, regulation and dictation as insurance."

All stock liability insurance companies are now inspected, supervised and regulated by the State, save only as respects premium rates, and competition surely regulates the rates, for liability insurance in this country is no longer controlled by a few companies. Many States now have their own stock liability insurance company, some States have many such companies. Indeed, new companies are springing up so fast that, at the present rate of increase, right soon every considerable city can boast of being the headquarters of one or more liability insurance companies. New Jersey has one, and another is in the process of formation there.

If Governor Wilson thinks that the rates liability insurance companies are asking in his State are so high that the companies will make too large profits, he need not set the cumbersome State machinery in motion for the purpose of relieving his fellow citizens from that evil. That will be a slow method, at best. He can give relief more quickly by asking his monied friends to start a company of their own—they can get a new company under way within a few weeks.

It requires neither experience nor good judgment to *start* a liability insurance company. All legal requirements are met by raising the necessary capital.

But the Governor had better look before he leaps. He glories in the fact that he has been a teacher. Long ago, the greatest of teachers pointed out the folly of an intending builder who "sitteth not down first and counteth the cost."

Much has been said in favor of the part "the State" plays in Germany as respects workmen's compensation for accidents.

The German system is often pointed to as a model for this country.

For twenty years Dr. Ferdinand Friedensburg was President of the Senate of the Imperial Insurance Office of the German Empire.

Dr. Friedensburg has issued a pamphlet calling attention to the abuses of German State employers' liability insurance as it has worked out in practice. He does not condemn the underlying principles of workmen's compensation for accidents.

Dr. Friedensburg says that charity crept in and corrupted the system at the beginning; that "workmen very soon got accustomed to bringing their complaints, doubts, and claims of all natures whatsoever to the Imperial Insurance Office, often without appealing to any intermediate instance;" that the Imperial Insurance Office, which is intended to handle questions of law, is overburdened with frivolous and unfounded claims; that "the expenses of the system continued to grow as the force required increased;" that "the number of officials in the Imperial Insurance Office has multiplied in tune with the ever-waxing burden of work;" that " * * * the number of accidents grows with monstrous speed;" that "in 1886, 100,159 accidents were reported and 10,540 (10 per cent.) compensated, in 1908 662,321 accidents were reported and 142,965 (21 per cent.) compensated;" that "often an accident is sought for and arranged;" that sometimes a chronically sick man swears that his old illness is the result of a recent accident and gets consequential help; that "the communal chiefs act entirely under the belief that they ought to help their local residents, * * * as a result of the common opinion that the insurance funds have more money than they know what to do with, and this idea strikingly deadens the conception of legality and love for the truth;" that "naturally the universal laxity, the payment of unjustified claims, and the extravagance practiced in equipping hospitals and sanatoria impair the integrity of the insurance funds;" that "employers do all that is possible to escape their burdens, which they feel to be unjust, and in vain enormous sums are annually exacted from them in fines;" that " * * * industrial unions and insur-

ance institutions * * * have been repeatedly on the brink of bankruptcy."

Dr. Friedensburg points out that the excessive cost of the insurance system, which is one result of the degradation of the system into charity, is complained of by employers, and that State insurance, therefore, reacts injuriously upon Germany's industry.

He says: "As a result of the cost of insurance, which has gradually become monstrous, * * * German industry is put at a disadvantage and is hampered to the extreme in its competition with foreigners."

Indeed, Dr. Friedensburg makes the astounding statement that the German system of workmen's compensation is held responsible for the marked rise in prices which is felt to be oppressive by all classes of the German population.

Liability insurance companies in this country now have the necessary organizations to care properly, on behalf of employers and others, for claims for damages and compensation arising from accidental bodily injuries.

The clumsy, unwieldy, red-tape, extravagant and politically-changing State certainly is not now and presumably never will be properly equipped to do this work satisfactorily.

The greatest danger which confronts underwriters in this country lurks in statements such as Governor Wilson's for similar statements made by prominent men are given wide publicity and are read by everyone. On the other hand, few will circulate and fewer will read any statement made by any underwriter in defense of insurance rates.

I respectfully submit to Governor Wilson that he withdraw, at least for the time being, his suggestion of State insurance, and that in lieu thereof he recommend to his Legislature that it *legalize liability insurance rate-making bodies under State supervision.* Then all such companies will be under the *complete* control of the State, and the State will thereby be saved from a possible humiliating failure should it plunge into the business *directly.*

This nation of ours is divided into half a hundred sovereign States, each with power to make laws to govern all the liability insurance companies now doing business as well as

those companies which will hereafter enter the field. This power, properly exercised, ought to prove more effective than State insurance, subject, as that must be, to political influence. Liability insurance is a science the practice of which does not easily lend itself to the ordinary abilities of the State politician and the party boss, who, as things now are, each within the sphere of his action, dominates State government.

RATE MAKING UNDER STATE SUPERVISION

Address of Mr. John T. Stone

President, Maryland Casualty Company

Throughout the legislation proposed and enacted relating to the subject of recompense for industrial bodily injuries, whether such legislation take the form of modifications in the system known as employers' liability or the form of the establishment of the system known as workmen's compensation—and throughout the nation-wide discussion of this many featured and complex subject, that feature which is most complex, most difficult, yet primary and fundamental, namely, the feature of cost has had scant attention in the utterances of many of those who have had great influence in the framing of legislation on the subject. That is, scant attention during the process of framing and enacting such legislation. The cry of the bereaved and the injured, the plea of the sociologist and humanitarian, the pressure of the labor organizations, and other influences, all legitimate and worthy of attention, have so filled the ears and monopolized the thought of legislators that they seem not to have heard the other voices which have called attention to the fact that every increase of the amounts received by injured employees means a corresponding increase in the amounts paid by employers. It seems childish to state so elemental a fact, yet, obvious as it is, our law-makers have overlooked it. Hence, when the cost of meeting this increased hazard thus created by new laws is reflected in advanced rates for employers' liability or workmen's compensation insurance, a great outcry of amazement and protest goes up from governors and others against the insurance companies. The amazement should be directed against their own short-sightedness.

But, since this so patent a fact has been so frequently overlooked, some other equally important and true, but per-

haps not very generally recognized, facts may well be recited here.

First.—Any system of compensation for trade injuries necessitates insurance in order that the unknown but probable annual outlay required by it may be calculated and limited as to the employer, to the end that he may deal definitely with this factor of cost in his business.

Second.—The solvency of the companies issuing such insurance must be safeguarded with more than ordinary care, because the losses are not promptly determinable, but for the major portion unavoidably require considerable periods of time in adjustment.

Third.—The solvency of the insurance companies depends upon the adequacy of their income to meet their outgo; and the adequacy of their income depends upon the adequacy of their premium rates.

All this is plain enough, but the next steps—the ascertainment and the maintenance of adequate rates—are anything but simple propositions. The naming of insurance rates is altogether different from the quoting of prices in any other class of business. Insurance deals not with factors like raw material and labor, whose cost is measured in sums already paid or agreed upon; but with the unknown possibilities of future occurrences. How then can any premium rate be named? In one or the other of two ways; either by guessing, or by compiling the experience of the past as to risks the same as, or similar to, those covered. Unfortunately for the insurance business, there have been many guessers in it, who have literally illustrated the saying sometimes heard, that "insurance is a gamble." The insuring public, upon whom the loss resulting from the insolvency of companies so conducted ultimately falls, is entitled to be safeguarded against that kind of underwriting. The initial safeguard is the certainty, or as near to it as can be, that the premium rates are sufficient.

Now, the experience of no one company is sufficient for the calculation of dependable rates. Such rates must be based upon a broad enough exposure to support a dependable operation of the law of average as to every one,

or every group, of the many hundreds of varieties of modern business. The only method of ascertaining what rate ought to be charged for each of these numerous classes of risks is to obtain from a large number of companies their tabulated and classified experience for a number of years, to have that mass of data combined and analyzed by competent statisticians and actuaries, and to have the results of their labors reviewed and applied to the present conditions by experienced underwriters, who are closely following the constant changes wrought in the insurance aspects of trade operations by the passage of new legislation. Such a method of rate making involves constant co-operation, unqualified good faith and much labor on the part of the companies contributing to it.

It is very certain that there must be something more than merely ascertaining what the rate ought to be, to induce the companies to take part in a plan which makes such demands upon them. There must be not only the finding of the right rates, but some reasonable likelihood of maintaining them when found. To some persons the mere mention of maintaining rates on *anything* immediately conjures up the monsters of restraint of trade, monopoly, trusts, etc.

Passing that by for the present, let us review briefly the situation as it has been for the past ten years, during which very little combined effort to ascertain rates and no concerted effort to maintain them has been made.

As to the companies: Premium rates on liability insurance have been made upon a purely competitive basis for the most part. Superficially one might say that is a good thing for the policyholder, because he gets a lower rate. Looking deeper, what do we find? These results, as to the companies: rates crowded down year after year, frequently below the safety line, yet the companies forced to meet them in order to prevent being forced out of the business; income in some cases insufficient to provide sufficient reserves; the surplus of some companies reduced, the capital of some endangered and stockholders assessed.

In the eight-year period, from 1903 to 1910, the eighteen casualty companies which wrote employers' liability insurance made an average underwriting profit of 2.28 per cent. on their earned premium income of $279,000,000, derived from all the various kinds of casualty insurance. As some of these classes are known to be much more profitable than liability insurance, the profit on that branch was certainly less than the very narrow margin of about 2¼ per cent.; which means that it was nearly, or quite, nil. Five of the eighteen companies made a net loss on the entire eight years' business.

As to the policyholders: Always an uncertainty as to whether the rates they were paying were not more than someone else paid in the same line of business; dissatisfaction and widespread criticism because of alleged delay and trimming of claims; doubt and fear in many cases lest the insurance company may not survive throughout the years and may be unable to pay its claims when the delayed settlement day arrives.

These are the facts which have characterized the past decade of rate competition in the liability insurance business, and they have brought the companies to a keen realization that only by co-operation in ascertaining and maintaining rates may they hope to survive and to make good their obligations to their policyholders. But when they attempt such co-operation they are advised that it is a violation of the anti-trust laws in some States and possibly an infraction of the common law doctrine forbidding combinations "in restraint of trade" in every State. If such be the case, it is high time for the enactment of laws that will effect radical changes in that situation, and the purpose of this paper is to plead for such enactments.

Your speaker submits this proposition: That in every State a law should be enacted which will provide as follows: 1st, that the Insurance Commissioner shall obtain, within a specified time, from any rating bureau or association or other actuarial or statistical sources composed of or connected with companies doing this class of business in the State, a manual or manuals of rates and regulations

for the writing of liability or workmen's compensation insurance; 2nd, that a State Board of Insurance Review consisting of the Commissioner and two other members to be appointed by the Governor and to be men of reputed sound business judgment and experience, shall pass upon the manuals obtained or submitted and adopt one of such; 3rd, that the rates contained in the manual so adopted shall be the minimum rates for their respective classifications, always subject to change as to individual classifications or groups upon evidence satisfactory to the Board of Insurance Review; 4th, that after the adoption and promulgation of such rates by the Board of Insurance Review every company writing liability or workmen's compensation insurance in that State shall charge not less than those rates, and that upon proof of violation of this requirement the Insurance Commissioner shall revoke the license of the company so offending.

In framing this proposal I have endeavored to consider every objection that might be raised against it, and I find just three. First, that it would discourage individual underwriting judgment, ability and initiative by placing every company on the same level as to price. Second, that it would encourage the exaction of excessive rates. Third, that it would create a monopoly for the benefit of the companies which already have the business on their books.

As to the first: Instead of discouraging, this plan would encourage individual underwriting judgment, ability and initiative by delivering agents and underwriters from the unwholesome atmosphere of that competition which begins, continues and ends in the effort to make or meet the lowest rate and leaves little, if any, room for the more important, indeed the vital, factors of service. In fact, it is the absence of established rates, the prevalence of the notion of competitive cheapness, the concentration of the attention of underwriter, agent and assured upon the rate alone, which gives but little encouragement to the development of initiative, judgment and ability. What reward is there for the exercise of high qualities in the interest of better coverage, intelligent suggestion, conscientious service,

when they are all swept aside merely by a reduction in rate offered by a competitor? On the contrary, if rates were maintained by all companies alike, every faculty of judgment, ability and initiative possessed by agent and underwriter would be enlisted in the sane, wholesome and improving competition of good service to the assured.

Second, as to encouraging the exaction of excessive rates: The plan provides that the rates shall be calculated and compiled in manual form by the action, either joint or separate, of companies doing this class of business in the State, that out of the material thus furnished the Board of Insurance Review shall select and promulgate its official manual, and that this manual or any rate contained in it shall be subject to revision upon submission to the Board, of evidence justifying a change. There is, therefore, this triple defense against excessive rates:—first, the common sense of the companies, who know that their patrons will discontinue the insurance rather than pay excessive rates; second, the determining power of the Board of Review as to what the rate shall be; and third, the opportunity given at all times to any one interested to apply for and secure a hearing and a revision as to any or all of the manual rates.

As to the third objection to the proposed law that it would create a monopoly for the benefit of the companies which already have the business on their books—as I recently said in a paper discussing anti-trust legislation with reference to insurance companies:

> "The easiest thing in the whole range of corporations to start and, so far as securing patronage is concerned, to run, is an insurance company. In every section and every State of the Union and in every province of Canada new insurance companies—fire, life, casualty, surety, etc.—are a perennial crop. Why? Well, there are various reasons, among which is the ease with which the thing can be done. No machinery to construct, no patents or copyrights to purchase or pay royalties on, no plant or buildings to erect, no large investment necessary; in the opinion, apparently, of many investors, no skilled labor or super-

vision required, and no raw material at all to be obtained. It is an unhappy fact, to which many thousands of stockholders and policyholders in the hundreds of defunct insurance companies can testify, that the ease and frequency with which companies have been organized is proof positive that a monopoly of the business is an absolute impossibility in the very nature of the case.

"The fact is, and it is as obvious a fact as the sun at high noon, that the public needs protection, not against the unreal phantasy of insurance monopolies, but against irresponsible and incapable men and concerns who sell so-called insurance stock to unwise investors and so-called insurance policies to unwise patrons."

My proposal, therefore, does not involve any danger of that impossibility, a monopoly of the business.

Permit me now to submit the reasons which support the proposition under these headings:

(a) The direct benefits of rating bureaus and agreements among the companies.

(b) The indirect benefits, or by-products, of such agreements and bureaus.

(c) The business basis for State supervision of the rates.

(d) The legal basis for State supervision of the rates.

The Direct Benefits of Rate Agreements Among the Companies.

These have already been alluded to in this paper, so that I need only summarize them now. Without such agreements the great labor and expense of maintaining actuarial bureaus for the tabulation and analysis of experience data and the deduction therefrom of the actual cost of carrying each class of risks, upon which cost the rate must be predicated if it is to be fair to both insurer and insured, would hardly be justified. With such agreements, giving an assurance that when adequate rates are ascertained they will be maintained, the cost of the actuarial bureau becomes a legitimate expense. The policyholder

benefits constantly by such bureaus and agreements, because he knows that his competitors in his own line of business pay the same rate for the same class of hazard which he pays, no more, no less, and that that rate is not made by the auctioneer or huckster process, but by intelligent calculation on the basis of actual experience. The employer and employee alike benefit, because such bureaus and agreements mean that the solvency of the companies will be conserved, so that no matter how long a time may elapse before an adjustment of a disputed claim is reached, and no matter how large the damages assessed may be, the insurance company will be able to pay. If such bureaus and agreements had always been maintained there would probably have been no bankruptcies of companies and consequent losses to policyholders and claimants.

The Indirect Benefits, or By-products, of Such Agreements and Bureaus.

They offer the only practicable medium through which the aggregate experience data of all the liability insurance companies may be made available and useful to the public and public officials and legislators in sounding and charting the unknown sea of workmen's compensation legislation. This reason may not commend itself to some of the distinguished Governors of some of the sovereign States, one of whom has given tongue to the epithet "fungoid social parasites" in speaking of liability insurance companies. The same gentleman fathered a law creating a scheme of State Insurance against industrial accidents, and in advocating it declared that no insurance man should have anything to do with framing the law or administering it. At the same session of the Legislature he favored a bill which was enacted, appropriating a very large sum of money for the erection of a group of public buildings at the State Capital. To be consistent he should have stipulated that no architect or builder should have anything to do with the planning or erection of those buildings. Happily, however, our public life is not afflicted with very many men whose mental vision is so distorted, and we may therefore urge,

with confidence in its general acceptance, the public value of the statistical and actuarial compilations of experience data by rating bureaus of liability insurance companies.

Of equal, or in fact greater, value to the public, is the preventive work which such bureaus and agreements foster, and which without them would be limited, spasmodic and ineffective. Only a very few of the larger companies have the equipment, and a volume of business sufficient to justify the expense, necessary for the inspection of risks with a view to reducing the number and the severity of accidents.

The Workmen's Compensation Service and Information Bureau, which comprises in its membership almost all the companies writing such insurance, now has in preparation a plan which will put at the service of all its members, and, therefore, of all their policyholders, a system of inspections of risks which will bring to bear upon them the united influence and the combined study of thoroughly trained and experienced men to the end that the use and the improvement of existing safety devices, appliances and regulations shall be encouraged and extended; and that where such safeguards do not now seem practicable, although needed, conditions shall be persistently studied and remedied if possible. Comprehensive, nation-wide work of this kind should and doubtless will, in time, accomplish very great saving of life and very much greater prevention of injuries, which will in turn reduce the amounts paid for account of such occurrences and, in consequence, the cost of insurance. This is an economic by-product (to say nothing of its humanitarian value) which cannot be extensively produced without the concerted support of such a bureau.

The Business Basis for State Supervision of Rates.

If a rating bureau or association could give satisfactory assurances that its rates would be just right and always right, neither too high nor too low and if it had power to compel all companies writing liability or workmen's compensation insurance to contribute to and participate in its

work and to maintain its rates, then the State would not need to supervise it. The insuring public rightfully demands that the rates shall not be excessive. The necessity for constant and ultimate certainty that the protection paid for shall fully protect demands that the rates shall not be inadequate. Without State supervision there would be always the possibility on the one hand of excessive rates when all companies were in the bureau, and on the other hand of inadequate rates forced by the cutting of companies outside of the bureau. With State supervision authorized to approve or amend rates and to require all companies to charge rates thus promulgated, both of these dangers become impossible. The practical wisdom and desirability of rate agreements under State supervision has had recognition and advocacy in a most deliberate and authoritative fashion in the three representative States of New York, Illinois and Minnesota.

In April, 1909, the Illinois Legislature adopted a resolution authorizing and requesting the Governor of that State "to appoint a commission consisting of five competent and disinterested citizens," "to report as to the advisability of enacting a law regulating fire insurance rates in this State." That commission submitted its report, comprising 77 pages, on January 4, 1911, having spent nearly two years in an exhaustive study of "the most important features of the relation of the fire insurance business to the insuring public." On pages 74 and 75, in stating its conclusions, the commission said, "We have assumed that *regulation* did not presuppose *making* rates by the State, and our investigation leads us to the conclusion that any attempt by the State to assume the function of creating or originating rates for fire insurance would be a serious mistake, both from the standpoint of practicability and of the constitutionality of a law for this purpose. We believe the State should not make rates but certainly should supervise the rates after they are made." "The complaints which have been made to us have been chiefly against discrimination, and such complaints have been well founded and the evil complained of should be corrected. Let the

insurance companies establish rates upon all classes of risks by schedules producing uniformity and, after such rates are fixed, collect them from all persons, upon all property in all parts of the State."

In May, 1910, the Legislature of New York appointed a committee from among its own members to investigate insurance companies "other than life," under a resolution so phrased as to require the most searching probing into every phase of the subject. The committee reported on February 1, 1911. Its report makes a pamphlet of 164 pages, and states that for lack of time its work was confined to fire insurance including insurance exchanges and boards of underwriters. Forty pages of this report, from page 38 to page 78, are devoted to the subject of rate making. It did not come to the attention of your speaker until the most of this paper had been written, and he was, therefore, especially gratified to notice that the main lines of his own argument herein correspond with, and are very fully elaborated in, the contents of those forty pages. Some of the conclusions stated by the committee are as follows: "That the making of equitable rates demands co-operation;" "that open competition leads to the general weakening of companies, the elimination of small companies, and to discrimination in favor of the policyholder with influence;" "that the only alternative to open competition is combination not merely to make but to maintain rates;" "that the making of equitable rates is the consideration which should be demanded of the companies for the right to combine;" and that the committee does not recommend rate making by the State, but the supervision of rate making bodies.

In the recently published annual report of Insurance Commissioner Preus of Minnesota, he says:

> "Co-operation in the making of rates is absolutely necessary. First, because a wide experience is necessary in order to arrive at equitable rates; secondly, economy would require co-operation in arriving at rates because the same rates are required by all insurance companies and duplication of the work would

be extravagant. The time has now gone by when any commonwealth is desirous of competition in rates. The experience has always and invariably been that where there is competition in rates men with influence get the lowest rates and such competition has usually resulted in the elimination of the smaller companies, and has weakened the confidence of the public in the stability of fire insurance companies in general. There can be no question but that open competition in rates invariably operates to the detriment of the poor man and in favor of the person of large property holdings.

"Rate making bureaus are frequently referred to as trusts or combinations in restraint of trade and in certain instances where they are not subject to State supervision they have been rightly designated as monopolies restraining trade. All rate making bureaus operating in the State of Minnesota should be subject to supervision by the State Insurance Department. No company or agent subscribing to the rates of a bureau should be permitted to cut the rates so prescribed or in any manner discriminate between the insured. An agent or company violating the law against rebating should be penalized by having their license revoked by the Commissioner of Insurance. The Commissioner of Insurance should be empowered upon complaint of an assured or insurer, after investigation by the proper authority, to correct the rates of a rating bureau. There is no reason at this time why the State should have the burden imposed upon it of making rates, but certainly it should have supervisory power over all rating institutions."

While all three of these official utterances relate specifically to fire insurance, they have even greater force and closer application with reference to liability and workmen's compensation insurance.

The Legal Basis for State Supervision of the Rates.

In Andrus v. Fidelity Mutual Life Asso., 67 S. W. 585, the following language was used by the Court:

"By reason of the nature of the business insurance companies' conduct, by reason of the character of their contracts, which may last for the life of the assured,

> or may terminate any year or any quarter, * * * such companies and such contracts naturally and properly belong to a class unto themselves and must be governed by laws that would be wholly inappropriate to any other company or any other contracts."

Here the doctrine laid down gives definite judicial affirmation to one of the fundamental contentions of this paper, namely, that the insurance business differs essentially from other kinds of business and must, therefore, be governed by different laws.

In Whitfield v. Aetna Insurance Co., 205 U. S. 489, it was held that "It is competent for a State to provide regulations governing contracts of insurance and declaring the form of policies and the effect of provisions contained therein, any agreement or stipulation between the parties to the contrary notwithstanding. For instance, the State may legally declare that suicide shall be no defense in an action on a policy."

In Hancock Mutual Life Insurance Co. v. Warren, 181 U. S. 73, it was held that "A State may further provide that applications shall not be considered a part of the contract unless attached thereto, or endorsed thereon, despite the provisions of the contract."

In New York Life Insurance Co. v. Cravens, 178 U. S. 389, and in Continental Fire Insurance Co. v. Whitaker (Tenn.), 64 L. R. A. 451, it was held that "A State may also declare that certain statements shall not be construed as warranties or void the policy unless material to the loss."

If a State may lawfully change and modify the contract between the insurance company and the assured in respect to its coverage, may it not also supervise the rates of insurance? There seems to be little difference in effect between decreasing the rate and increasing the hazard, or vice versa.

Whether a State may constitutionally regulate the rates of its own insurance companies depends upon the general character of the insurance business, *i. e.*, whether or not it is charged "with a public interest." In the case of

McCarter v. Firemen's Insurance Co., 73 Atl., p. 80, this subject is considered at length, and the Court holds:

> "If such business were still in the hands of individual underwriters, unaffected by State regulation and confined to the writing of policies on the dwellings of prudent householders and on the stores of careful merchants, a great deal might be said in favor of the view that no public interest had attached to the making of these private contracts. We cannot, however, close our eyes to the fact that by the enormous extension of this business, by its concentration in the hands of immense corporations, by State regulations that amount to privileges, and by its practically universal employment as collateral security for debts, the business has become one in which the interest of the public is directly involved."

In the case of Northwestern Mutual Life Insurance Co. v. Riggs, 27 Supreme Court Reporter, 120, Justice Harlan says:

> "The business of life insurance is of such a peculiar character, affects so many people, and is so intimately connected with the common good, that the State creating the insurance corporations and giving them authority to engage in that business may, without transcending the limits of legislative power, regulate their affairs."

Under this principle of public interest, laws regulating the rates to be charged by various corporations have been held constitutional. For instance, railroads:

Chicago &c. Railway Co. v. Minnesota, 134 U. S. 411.

Chicago v. Wellman, 143 U. S. 339.

Rates of toll charged by mills which grind, or offer to grind, grain for toll or pay.

Burlington v. Beasley, 94 U. S. 310.

Water Companies.

Spring Valley Water Wks. v. Schlotter, 110 U. S. 347.

Stock Yards.

Cotting v. Kansas City Stock Yards Co., 183 U. S. 79.

Grain Elevators.

Budd v. New York, 143 U. S. 517.

A State may regulate the rates to be charged by slaughter-houses.

Slaughter-house cases, 16 Wallace (83 U. S.) 36.

A State may regulate the rates to be charged by gas companies.

Spring Valley v. Schlotter, 110 U. S. 347.

A State may regulate the rates of interest.

Kehler v. Miller, 1 Leg. Chron. 35.
State v. Harrison, Harp. 88 (S. C.).

It may be said in the light of all this that a State can undoubtedly, as a police measure, regulate the rates to be charged by *foreign* insurance companies, provided the regulation is based upon the State's license to do business; and that, a State may also regulate the rates to be charged by *domestic* insurance companies upon the ground that insurance is charged with a public interest, and, therefore, can be controlled by the State to the extent of preventing either exorbitant rates or unreasonably low rates which would tend to impair the solvency of the company.

This power of State regulation or supervision of rates has already been exercised by several States with reference to other classes of insurance.

The Laws of Kansas, Chapter 55, Article 9, provide as follows:

Section 4265 requires fire insurance companies to file with the Superintendent of Insurance general basis schedules.

Section 4267 allows the Superintendent to compel the filing of a higher or lower rate should the existing rate be

excessive "or inadequate to the safety or soundness of the company."

Section 4268 prohibits fire insurance companies from doing business in the State unless schedules are filed, and from writing insurance at a different rate.

Louisiana Acts of 1910, No. 219, creates a board known as a State Insurance Rating Board. The companies are required to file with the secretary of the Board general basis schedules showing the rates of premiums on all classes of risks insurable by the company, and all charges, credits, terms, privileges and conditions affecting such rates, together with rate of commission to be paid agents or brokers. The companies may employ expert rate makers to compile such schedules. The Act prohibits discrimination and rebating.

A Missouri law of 1911 requires insurance against loss or damage by fire, lightning, hail, wind storm and sprinkler leakage to be conducted according to the provisions of the Act, and the acceptance of a certificate to transact business in the State is deemed a consent to its terms; requires all premiums to be reasonable and just, and prohibits discrimination; requires all such insurance companies to file with the Superintendent general basis schedules showing charges, etc., affecting the rates of insurance on property in the State; prohibits the collection of any premium other than at the rate shown by the schedules filed; discrimination and rebates are prohibited; fixes a penalty of fine and imprisonment for violation of the Act, and permits the revocation of the company's license.

Insurance Laws of South Carolina, Section 8, page 13, prohibits associations to fix or maintain excessive or unreasonable rates, but provides "that it shall be lawful for such insurance companies to be a member of any association the purpose and object of which is to secure the proper inspection of risks, the classification of risks, the maintenance of uniform and reasonable rates, and the prevention of discrimination in charges between parties dealing with such insurance companies in this State."

An Act of the Texas Legislature, approved April 19, 1909, provides as follows:

Sections 1 and 2 make acceptance of the conditions of the Act a prerequisite to the granting of a license to a foreign insurance company, and of a certificate to a domestic company.

Section 4 requires fire companies to file general basis schedules showing the rates on all classes of risks insured by the company, with charges, credits, terms, privileges and conditions affecting such rates. These rates may be prepared by experts.

Section 5 prohibits changes in the schedules except after thirty days' notice and the filing of new schedules.

Section 6 allows the Board to determine whether the rates are excessive or inadequate, and to compel the companies to file higher or lower rates.

Section 7 prohibits fire insurance companies from writing business until their schedule of rates has been filed, and prohibits any departure from the rates filed.

Section 10 prohibits rebates and discriminations.

Section 11 allows the revocation of the license for violation of the Act.

Section 15 requires non-resident companies to file certified copy of the resolution agreeing to be bound by the Act.

State of Washington Acts of 1911, Chapter 49, provides for a rating bureau covering fire insurance as follows:

Section 73 makes it a condition precedent to the issuance of a license to an insurance company that it shall file in the office of the Insurance Commissioner copies of rating schedules, and requires the company and its agent to observe such schedules until amended or corrected.

Section 74 allows persons, co-partnerships or domestic corporations to organize or maintain rating bureaus for the purpose of inspecting and surveying the various municipalities and fire hazards, etc., "for the purpose of estimating fair and equitable rates for insurance. The business of conducting a rating bureau in this State is public service in

character. Every rating bureau shall, before publishing or furnishing any rates, file in the office of the Insurance Commissioner its rating schedules, and shall not deviate therefrom until amended or corrected rating schedules shall have been filed in the office of the Insurance Commissioner."

With the way thus partially blazed, and with the clear conviction, drawn from all of the facts herein presented, that the business of liability or workmen's compensation insurance cannot be conducted with the reasonable profit to which the capital engaged in it is entitled, nor with the permanent solvency which is necessary for the protection of the policyholder, nor so as to prevent unjust discriminations in rates, unless rating bureaus are maintained by the companies, are approved by State authority, and all companies required to adhere to the rates thus ascertained and authorized, your speaker has had prepared a draft of a bill to be introduced during the coming winter in such Legislatures as may be in session, which reads as follows:

A Bill

Entitled An Act providing conditions upon which companies issuing Policies of Liability or Workmen's Compensation Insurance shall transact business in this State and providing for the regulation and control of rates of such business and to prevent discrimination therein and to create a State Board of Insurance Review.

Section 1. Be it enacted by the General Assembly of Maryland: That all foreign or domestic corporations, companies, joint stock companies and firms and all persons now issuing or which may hereafter issue in this State policies of insurance of the kind known as liability or workmen's compensation insurance shall be subject to the terms and provisions of this act.

Section 2. And be it further enacted by the General Assembly of Maryland: That there is hereby created a board to be known as the State Board of Insurance Review, which shall be composed of the Insurance Commissioner of the State of Maryland and two other members to be appointed by the Governor, who shall be persons of reputed sound business judg-

ment and experience, and who shall have had at least three years' practical experience in the business of liability or workmen's compensation insurance. The said two members shall be appointed and hold office for two years or until their successors are appointed. The duties of said Board shall be such as are hereinafter defined in this act. The Insurance Commissioner shall be the Chairman of said Board, and in discharging the duties imposed upon said Board the concurrence of any two members thereof shall be sufficient to constitute action by it. Said members of said Board other than the Insurance Commissioner shall each receive as compensation for their services the sum of * * * dollars per annum. The said Board shall also have a secretary, who shall receive an annual salary of * * * dollars. The salary of said two members of said Board and that of its secretary to be paid as hereinafter provided for.

Section 3. And be it further enacted, etc.: That every insurance company transacting in whole or in part the business of liability or workmen's compensation insurance in this State, shall not later than thirty days after the Board hereby created shall be organized file with the secretary of said Board tables or schedules showing the rates charged by them on all classes of liability and workmen's compensation insurance which said companies may issue in this State, and all charges, credits, terms, privileges and conditions which in anywise affect such rates or the value of such insurance issued by said companies. Said companies subject to the provisions of this act shall also furnish to the said Board of Insurance Review all information or data regarding the risks assumed by them and the rates charged therefor which the said commission may upon demand require. Rating bureaus or associations composed of such companies may be established and maintained and the manuals, data and other information compiled by said bureaus or associations shall be filed with the said Board as is required of individual companies. Said Board shall have full power to summon to testify before it from time to time, any officers, agents or employees of said companies, bureaus or associations subject to this act, or any person, when said Board shall deem the testimony of such officer, agent, employee or person necessary for obtaining information for the purpose of discharging the duties

imposed upon said Board by this act. Any such officer, agent, employee or person failing to appear before said Board when duly notified shall be subject to a fine of not less than twenty or more than two hundred dollars.

Section 4. And be it further enacted, etc.: That it shall be the duty of the said Board of Insurance Review within the period of six months after its organization under the terms of this act to prepare and publish a manual of rates on all classes of liability and workmen's compensation insurance, which said rates when so prepared and published shall be the minimum rates to be thereafter charged in this State by any company subject to the provisions of this act for the classes of insurance for which said rates are so prepared and published.

In ascertaining and determining the said minimum rates as aforesaid the said Board shall be governed by the following rules: First, The said minimum rates shall in all cases be reasonable; Second, The said minimum rates shall in all cases be adequate for the safety and soundness of the company issuing the insurance for which said rates are to be the minimum charge.

Said Board shall also have the power to alter, amend or revise such manual of rates or any one or more of them so as to make them or any of them conform to the provisions of this act.

Section 5. And be it further enacted, etc.: That no company subject to the provisions of this act shall charge or receive any premium for any liability or workmen's compensation insurance computed at a lower rate than may be fixed, determined and published by the said Board for such class of insurance.

Section 6. And be it further enacted, etc.: That no such company shall directly or indirectly by any special rate, tariff, rebate, draw-back or other device, charge, demand, collect or receive from any person or persons, firm or corporation, a greater or less or different compensation for the insurance of risks mentioned in this act than it charges, demands, collects or receives from any other person or persons, firm or corporation for like insurance of a like kind and hazard under similar circumstances and conditions in this State, and any such company violating the provisions of this section shall be deemed guilty of a misdemeanor

and subject to a fine of not less than twenty nor more than one thousand dollars.

Section 7. And be it further enacted, etc.: That the said State Board of Insurance Review, if it shall find that any company subject to the provisions of this act, or any officer, agent or representative thereof, has violated the provisions of this act, may at its discretion revoke the license of said company to do business in this State, provided that any action, decision or determination of the State Board of Insurance Review shall be subject to the review of the Courts of this State as hereinafter provided.

Section 8. And be it further enacted, etc.: That if any company or any other person, firm or corporation which shall be interested in any regulation, rate or order fixed, determined, published or adopted by said Board shall be dissatisfied with any regulation, order or rate fixed, determined, published or adopted by said Board, such person, etc., shall have the right within thirty days after the making of such regulation, order or rate to bring an action against said Board in any Circuit Court of this State or any court of Baltimore City having civil jurisdiction to have such regulation, order or rate vacated or modified and shall set forth therein the particular ground or grounds of objection to any or all of them. In any such suit the issue shall be formed and the controversy tried and determined as in other civil cases; and the court may set aside, vacate or annul one or more or any part of any of the regulations, orders or rates adopted or fixed by said Board which shall be found by the court to be unreasonable, unjust, excessive or inadequate to compensate the company writing insurance thereon for the risks assumed by it, without disturbing others. No injunctions, interlocutory order or decree suspending or restraining directly or indirectly the enforcement of any rate or order of said Board shall be granted. Either party to any such action, if dissatisfied with the judgment or decree of said court, may appeal therefrom as in other civil cases.

Section 9. And be it further enacted, etc.: That any insurance company subject to the provisions of this act, or any officer thereof, or any agent or person acting for or employed by any such company who alone or in conjunction with any corporation, company or person shall willfully do or cause to be done

or shall willfully suffer or permit to be done any act, matter or thing prohibited or declared to be unlawful by this act, or who shall willfully omit or fail to do any act, matter or thing required to be done by this act, or shall cause or willfully suffer or permit any act, matter or thing described by this act not to be done, or shall be guilty of any willful infraction of this act, shall be deemed guilty of a misdemeanor and shall upon conviction be punished by a fine not to exceed $100 for each offense.

Section 10. And be it further enacted, etc.: That the salaries of the members of said State Board of Insurance Review and of its secretary and the compensation of the necessary clerical and other assistants employed by said Board, and any necessary traveling or other expenses incurred by said Board in carrying out provisions of this act shall be paid by warrants drawn by the Comptroller upon the State Treasurer, upon the order of said Board, provided that the total amount of such salaries and expenses shall not exceed the sum of * * * dollars during any one year after this act takes effect and the said Board is organized hereunder; and the said warrants shall be charged against the funds received by the Insurance Commissioner for fees, taxes, etc., from companies transacting liability or workmen's compensation insurance in this State and paid over to the State Treasurer by the said Insurance Commissioner.

Section 11. And be it further enacted, etc.: That this act shall take effect from and after the date of its passage.

The support of all of the companies engaged in this class of business, and of all others who are in anywise interested, is very earnestly desired to the end that this measure shall be enacted, in substance, in every State, as early as practicable.